

TABLE OF CONTENTS

1.	ADULT PROTECTIVE SERVICES.....	1
2.	LEGAL BASE	1
3.	CHARGE TO LOCAL DEPARTMENTS OF SOCIAL SERVICES	1
4.	DEFINITIONS OF TERMS	1
5.	ADULT PROTECTIVE SERVICES INTAKE	11
5.1.	Accepting Reports	11
5.2.	Adult Protective Services Reports	12
5.3.	Source Of Reports	12
5.3.1.	Mandated Reporters	12
5.3.2.	Requirements of Employers of Mandated Reporters	14
5.3.3.	Duplicate Reports From Mandated Reporters	14
5.3.4.	Exceptions to Immediate Reporting Requirements for Mandated Reporters.....	15
5.3.5.	Reports of Deaths That Are Results of Abuse and Neglect	15
5.3.6.	Failure to Report.....	16
5.3.7.	Types of Reports	16
5.3.8.	Self-Reports.....	17
5.3.9.	Domestic Violence Reports.....	18
5.3.10.	Agency/Worker Generated Reports.....	18
5.3.11.	Reports of On-going Cases	18
5.3.12.	Reports that the Adult Is Incapable of Making and Signing an Application for Medicaid.....	18
5.3.13.	APS Hotline Reports.....	19
5.3.14.	When an Annual Report Is Not Filed or Is Filed with the Agency by a Guardian and Creates Reason to Suspect	19
5.3.15.	State and Local Authorities and Agencies	19
5.4.	RIGHTS OF PERSONS WHO REPORT	20
5.4.1.	Immunity	20

5.4.2.	Malicious Reports	20
5.4.3.	Protecting the Identity of the Reporter	20
5.4.4.	Information to be given to the Reporter	21
5.4.5.	Additional Information To Be Given To Mandated Reporters	21
5.5.	Confidentiality	22
6.	INTAKE INTERVIEW.....	22
7.	DETERMINING VALIDITY OF REPORTS	23
7.1.	Characteristics of a Valid Report of Adult Abuse, Neglect or exploitation	23
7.1.1.	Age/Incapacity	24
7.1.2.	Age	24
7.1.3.	Incapacity.....	24
7.1.4.	Identifiable Adult	25
7.1.5.	Circumstances of Abuse, Neglect, and Exploitation	25
7.1.6.	Agency of Jurisdiction.....	25
7.2.	Place of Residence.....	25
7.3.	Outside of the Place of Residence.....	25
7.4.	Where Abuse, Neglect or Exploitation Was Discovered	25
7.5.	Nonresident in the Commonwealth.....	26
7.5.1.	When the Alleged Victim Is Incarcerated in a State Correctional Facility	26
8.	VALIDITY	26
8.1.	When the Report is not Valid	26
9.	DOCUMENTING THE APS REPORT IN ASAPS.....	28
9.1.	When There Is No Service Case in ASAPS.....	28
9.1.1.	APS Report Screen	28
9.1.2.	Case Info Screen	28
9.2.	When There Is A Closed Service Case in ASAPS	28
9.2.1	Case Info Screen.....	28
9.2.2	APS Report Screen.....	28

9.3	When There Is An Open Case In ASAPS.....	28
9.3.1	APS Report Screen.....	28
9.3.2	Case Info Screen.....	29
9.4	Invalid Reports.....	29
10.	TIME FRAME FOR INITIATING AN ADULT PROTECTIVE SERVICES INVESTIGATION	29
11.	HOT LINE REPORTS.....	29
12.	PREPARING FOR THE INVESTIGATION	30
12.1.	Coordinating With Other Investigators	30
12.2.	Where the Investigation Extends across City or County Lines.....	31
12.3.	Conflict of Interest.....	31
13.	CONDUCTING THE INVESTIGATION	31
13.1.	Legislative Authority.....	32
13.1.1.	Authority to Conduct Investigations	32
13.1.2.	Authority to Gain Access	32
13.1.3.	Access to Investigate.....	32
13.2.	Consultation with Others.....	32
13.3.	Judicial Authority.....	33
13.4.	Order for Access and/or Entry	33
13.5.	Required Visit and Private Interview	33
13.6.	When the Required Visit and Private Interview Cannot Be Completed.....	34
13.7.	Separate Interviews with Alleged Victim and Alleged Perpetrator	34
13.8.	Taking and Using Photographs, Video or Audio Recordings or Appropriate Medical Imaging of an Adult.....	34
13.9.	The Alleged Perpetrator.....	34
13.9.1.	Identity of Perpetrators	34
13.9.2.	Timing of Interview with the Alleged Perpetrator.....	35
13.9.3.	Setting for the Interview with Alleged Perpetrator	35

13.9.4.	Interview with the Alleged Perpetrator Who Is a Minor	35
13.9.5.	The Interview with the Alleged Perpetrator Is Not Completed	35
13.10.	Consultation with Collaterals.....	36
13.11.	Requirement to Release Information by Mandated Reporters	36
13.12.	Authority to Access Information and Records Regarding Action Taken by Attorneys-In-Fact or Other Agents	36
13.13.	Requests to Include Other Individuals in Interviews with Collaterals	37
13.14.	Collaterals in Facilities	37
14.	APS ASSESSMENT	37
14.1.	Components of the Assessment	38
14.1.1.	The APS Assessment Narrative	38
14.1.2.	The Assessment of the Adult's Circumstances Presented in Sub-headed Titles.....	39
14.1.3.	Completion of the Investigation.....	42
15.	DECISION-MAKING, DISPOSITION, AND APPLICATION.....	43
15.1.	Decision Making	43
15.2.	Eligible Adults	43
15.3.	Dispositions	43
15.3.1.	Time Frame for Making Disposition	43
15.3.2.	"Needs Protective Services and Accepts"	44
15.3.3.	"Needs Protective Services and Refuses"	45
15.3.4.	"Need for Protective Services No Longer Exists"	46
15.3.5.	"Unfounded"	46
15.3.6.	"Invalid"	47
16.	REPORTS TO BE FILED	47
16.1.	APS Report Form	47
17.	NOTIFICATIONS/TIMEFRAMES.....	47

17.1.	Notification to the Adult or His/Her Legal Guardian and/or Conservator or Responsible Person.....	48
17.2.	Referrals to Law Enforcement, Commonwealth Attorneys and Medical Examiner	48
17.3.	Reports to Departments / Programs with a Legitimate Interest.....	48
18.	OPENING A CASE TO ADULT PROTECTIVE SERVICES	48
19.	SERVICE PLANNING AND SERVICE DELIVERY.....	49
19.1.	The Service Plan	49
19.2.	Assessment	49
19.3.	Service Plan Requirements	49
19.4.	Participation of the Adult	50
19.5.	Participation of the Adult's Representatives.....	50
19.6.	Incapacitated Adult with No Representatives.....	50
19.7.	Review of Available Resources	51
19.8.	Community-Based Services.....	51
19.9.	Placement Services	51
19.9.1.	Placement with Consent of the Adult	51
19.9.2.	Voluntary Admission to a State Hospital	52
19.9.3.	Placement When the Adult Lacks Capacity to Consent.....	52
19.10.	Protective Services Ordered by the Court.....	52
19.11.	Purchased Services	52
19.12.	The Least Restrictive Level of Intervention	53
19.13.	Components Of The Service Plan	53
19.14.	Goals	53
19.15.	Unmet needs	53
19.16.	Objectives	53
19.17.	Tasks	54
19.18.	Target Dates	54

20.	IMPLEMENTATION OF THE SERVICE PLAN.....	54
21.	JUDICIAL PROCEEDINGS	55
21.1.	Access to Provide Protective Services.....	55
21.2.	Order to Enjoin Interference.....	55
21.3.	Emergency Order for Protective Services	55
21.4.	Judicial Authorization of Treatment and Detention of Certain Persons.....	57
21.5.	Appointment of a Guardian and/or Conservator.....	57
21.6.	Appointment of a Guardian.....	58
21.7.	Appointment of a Conservator.....	58
21.8.	Procedure in Absence of an Advance Directive.....	58
21.9.	Involuntary Admission.....	59
21.10.	Mental Health Emergency Custody and Involuntary temporary Detention Order.....	59
21.11.	Preliminary Protective Order in Cases of Family Abuse.....	60
21.12.	Emergency Protective Orders Authorized in Certain Cases.....	61
21.13.	Arrest without a Warrant in Cases of Assault and Battery against a Family or Household Member.....	61
21.14.	Criminal Abuse and Neglect of Incapacitated Adults.....	61
22.	REIMBURSEMENT FOR LEGAL SERVICES	62
22.1.	Payment for Emergency Order Proceedings	62
22.1.1.	When Cost Is Borne by the Subject of the Petition.....	62
22.1.2.	When Cost Is Borne by the Commonwealth.....	62
22.2.	Payment for Guardianship Proceedings	62
22.2.1.	When Cost Is Borne by the Petitioner.....	62
22.2.2.	When Cost Is Borne by the Commonwealth	62
22.3.	Payment for Guardians ad Litem and Other Attorney Fees	63
22.3.1.	When Cost Is Borne by the Petitioner.....	63

22.3.2.	When Cost Is Borne by the Commonwealth	63
22.3.3.	Payment for Guardianship Proceedings for Medicaid Referrals	63
22.4.	Payment for Psychological and Physical Examination.....	63
22.5.	Reimbursement for Cost of Providing Protective Services.....	64
22.5.1.	Involuntary Adult Protective services	64
22.5.2.	Voluntary Adult Protective Services	64
23.	EVALUATION / REASSESSMENT	64
23.1.	Evaluation	64
23.2.	Reassessment	65
23.2.1.	Continue Adult Protective Services	65
23.2.2.	Transfer to Adult Services	65
23.2.3.	Close the Case	65
23.2.4.	Procedures for Closure	66
24.	INVESTIGATIONS IN LONG-TERM CARE FACILITIES, ACUTE-CARE FACILITIES, AND OTHER GROUP CARE FACILITIES	66
25.	ACCEPTING REPORTS	66
25.1.	Person-Specific Reports	67
25.2.	Resident-to-Resident Reports.....	67
25.3.	When the Perpetrator Resident Continues to Reside in the Facility	67
25.4.	Incident Reports.....	68
25.5.	Injuries of Unknown Origin.....	68
25.6.	Sexual Abuse and Sexual Assault in Long-Term Care Facilities, Acute Care Facilities, and Other Group Care Facilities	68
25.7.	Abuse, Neglect or exploitation of a Resident Who Is Away from the Facility	68
25.8.	Reports That Do Not Meet Validity Criteria for an APS Report	69
25.9.	Reports That Address the General Conditions of a Facility	69
26.	RESPONSIBILITY OF THE APS WORKER.....	69
27.	COORDINATION WITH INVESTIGATORS WITH RELATED RESPONSIBILITIES	70
28.	INVESTIGATORS WITH REGULATORY OR STATUTORY AUTHORITY	70

28.1.	The Department of Social Services, Division of Licensing Programs	70
28.2.	The Department of Health, Office of Licensure and Certification	70
28.3.	The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS)	71
28.4.	The Office of the State Long-Term Care Ombudsman	71
28.5.	The Virginia Office for Protection and Advocacy (VOPA)	71
28.6.	The Department of Health Professions (DHP)	72
28.7.	Office of the Attorney General, Medicaid Fraud Control Unit	72
28.8.	Local Law Enforcement	72
29.	INFORMATION SHARING	72
29.1.	Information Sharing for the Purposes of Coordinating a Joint Investigation.....	72
29.2.	Disclosure of the Identity of the Reporter	73
29.3.	Information Sharing when a Joint Investigation Is Not Planned	73
29.4.	Assurances that Information Will Be Held Confidential.....	73
29.5.	Confidential Information Collected by the Investigatory Team	74
29.6.	Confidential Information Not Collected by the Investigatory Team	74
30.	PREPARING FOR THE INVESTIGATION	74
30.1.	Availability of Records.....	74
30.2.	Sources of Information Available within a Facility	74
30.3.	DMHMRSAS Incident Reports.....	75
31.	PERSONS TO BE INFORMED WHEN A REPORT IN A FACILITY WILL BE INVESTIGATED	75
31.1.	Facility Administrator/Director/Superintendent/Person in Charge	75
31.2.	When The Person in Charge Can Not Be Located	75
31.3.	Notification When No Person Is In Charge	76
31.4.	Legally Appointed Guardians/Conservators.....	76
31.5.	Responsible Person.....	76
32.	INVESTIGATION.....	76
33.	DISPOSITION AND DOCUMENTATION	77

34.	NOTIFICATIONS / REPORTS.....	77
34.1.	Notifications	77
34.2.	Reports	78
35.	IDENTIFICATION OF SERVICE NEEDS AND SERVICE PLANNING.....	78
36.	MONITORING AND FOLLOW-UP	78
37.	CONFIDENTIALITY.....	79
38.	RELEASE OF INFORMATION	79
38.1.	Agencies with a Legitimate Interest in Confidential Information.....	80
38.2.	Persons/Agencies with Legitimate Interest	80
38.3.	Circumstances Mandating Disclosure of Confidential Information	81
38.3.1.	When Disclosure Is Ordered by the Court	81
38.3.2.	Disclosure to Reporter	81
38.4.	Request for Private Information	81
38.4.1.	Specific Confidential Information that May Be Disclosed.....	82
38.4.2.	Assurances to Local Departments	82
38.4.3.	Methods of Obtaining Assurances	83
38.4.4.	Notification that Information Has Been Disclosed.....	83

APPENDICES

APPENDIX A - ADULT PROTECTIVE SERVICES REPORT FORM.....	84
APPENDIX B – PREPONDERANCE OF EVIDENCE	87
APPENDIX C-1 – SAMPLE LETTER TO MANDATED REPORTERS (WHEN THE REPORT IS NOT VALID).....	88
APPENDIX C-2 – SAMPLE LETTER TO MANDATED REPORTERS (WHEN THE REPORT IS UNFOUNDED).....	89
APPENDIX C-3 - SAMPLE LETTER TO MANDATED REPORTERS (WHEN THE REPORT IS SUBSTANTIATED).....	90
APPENDIX C-4 - SAMPLE LETTER TO MANDATED REPORTERS (WHEN THE NEED FOR PROTECTIVE SERVICES NO LONGER EXISTS)	91

APPENDIX D - SAMPLE NOTICE OF HEARING (TO CONSIDER ORDERING EMERGENCY SERVICES).....	92
APPENDIX E - SAMPLE PETITION FOR EMERGENCY PROTECTIVE SERVICES AND APPOINTMENT OF A TEMPORARY GUARDIAN	93
APPENDIX F - SAMPLE ORDER OF EMERGENCY PROTECTIVE SERVICES	95
APPENDIX G - PROTECTING VULNERABLE ADULTS THROUGH GUARDIANSHIP AND/OR CONSERVATORSHIP	96
APPENDIX H - SAMPLE PETITION FOR APPOINTMENT OF A GUARDIAN OR CONSERVATOR (FOR INFORMATIONAL PURPOSES ONLY).....	113
APPENDIX I - INSTRUCTIONS TO NEWLY APPOINTED GUARDIANS.....	116
APPENDIX J - ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON...	118
APPENDIX K - GUIDELINES FOR REVIEW OF GUARDIAN'S REPORT	120
APPENDIX L-1 - DRAFT LETTER TO GUARDIAN WHEN THE INITIAL REPORT IS OVERDUE	123
APPENDIX L-2 - DRAFT LETTER TO GUARDIAN WHEN THE FIRST OR SUBSEQUENT ANNUAL REPORT IS OVERDUE.....	124
APPENDIX M – SERVICE AREAS (AS OF SEPTEMBER 1, 2005)	125
APPENDIX N - DIRECTORY OF AGENCIES/PROGRAMS	126
APPENDIX O - REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES	133
APPENDIX O-1 INSTRUCTIONS FOR REFERRAL FOR INVESTIGATION FORM	136
APPENDIX P-1 - ASSURANCES OF CONFIDENTIALITY	138
APPENDIX P-2 - INSTRUCTIONS FOR ASSURANCES OF CONFIDENTIALITY FORM ..	139
APPENDIX Q - LETTER OF UNDERSTANDING	141
APPENDIX R-1 - MEDICAID REFERRAL TO APS TO REQUEST ASSESSMENT FOR GUARDIANSHIP (SIDE ONE)	142
APPENDIX R-2 - MEDICAID REFERRAL TO APS TO REQUEST ASSESSMENT FOR GUARDIANSHIP (SIDE TWO).....	143
APPENDIX S - INSTRUCTIONS FOR COMPLETING MEDICAID REFERRAL TO APS TO REQUEST ASSESSMENT FOR GUARDIANSHIP	145
APPENDIX T - INDICATORS OF ABUSE, NEGLECT, AND EXPLOITATION	148
APPENDIX U - CODE OF ETHICS	149

APPENDIX V – NOTIFICATION FOR EMPLOYERS OF MANDATED REPORTERS (OPTIONAL).....	150
APPENDIX W- IMPOSITION OF CIVIL PENALTY	151
APPENDIX W-1- REQUEST TO IMPOSE CIVIL PENALTY.....	153
APPENDIX W-2- SAMPLE LETTER TO MANDATED REPORTER (INTENT TO IMPOSE CIVIL PENALTY).....	155
APPENDIX X - <i>CODE OF VIRGINIA</i> , CHAPTER 16, ARTICLE 2.	156
APPENDIX Y - <i>CODE OF VIRGINIA</i> - CRIMINAL ABUSE OR NEGLECT OF INCAPACITATED ADULTS	164

1. ADULT PROTECTIVE SERVICES

Protective services to adults include the receipt and investigation of reports of abuse, neglect or exploitation of adults, as well as reports that adults are at risk of abuse, neglect or exploitation. Protective services also include assessing service needs, determining whether the subject of the report is in need of protective services, documenting the need for protective services, specifying what services are needed, and providing or arranging for service delivery. Services to adults whose situations do not allege abuse, neglect or exploitation, or the risk of abuse, neglect or exploitation, are provided under Adult Services.

2. LEGAL BASE

The mandate for providing protective services to adults is placed with local departments of social services by §§ 63.2-1603 through 63.2-1610 of the *Code of Virginia* and by the State Board of Social Services. Throughout this chapter, text that appears in capital letters denotes material from the *Code of Virginia* and/or the Department's Adult Protective Services (APS) 22 VAC 40-740-10

EACH LOCAL BOARD, TO THE EXTENT THAT FEDERAL OR STATE MATCHING FUNDS ARE MADE AVAILABLE TO EACH LOCALITY, SHALL PROVIDE, SUBJECT TO SUPERVISION OF THE COMMISSIONER AND IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD, ADULT PROTECTIVE SERVICES FOR ADULTS WHO ARE FOUND TO BE ABUSED, NEGLECTED OR EXPLOITED AND WHO MEET ONE OF THE FOLLOWING CRITERIA: (i) THE ADULT IS 60 YEARS OF AGE OR OLDER OR (ii) THE ADULT IS 18 YEARS OF AGE OR OLDER AND IS INCAPACITATED. THE REQUIREMENT TO PROVIDE SUCH SERVICES SHALL NOT LIMIT THE RIGHT OF ANY INDIVIDUAL TO REFUSE TO ACCEPT ANY OF THE SERVICES SO OFFERED, EXCEPT AS PROVIDED IN § 63.2-1608 (*Code of Virginia*, § 63.2-1605).

3. CHARGE TO LOCAL DEPARTMENTS OF SOCIAL SERVICES

LOCAL DEPARTMENTS SHALL FOSTER THE DEVELOPMENT, IMPLEMENTATION, AND COORDINATION OF ADULT PROTECTIVE SERVICES TO PREVENT ADULT ABUSE, NEGLECT, AND EXPLOITATION (*Code of Virginia*, § 63.2-1605(F)).

4. DEFINITIONS OF TERMS

- 4.1. **"ADULT"** MEANS ANY PERSON 60 YEARS OF AGE OR OLDER, OR ANY PERSON 18 YEARS OF AGE OR OLDER WHO IS INCAPACITATED AND WHO RESIDES IN THE COMMONWEALTH; PROVIDED, HOWEVER, "ADULT" MAY INCLUDE QUALIFYING NONRESIDENTS WHO ARE TEMPORARILY IN THE COMMONWEALTH AND WHO ARE IN NEED OF TEMPORARY OR EMERGENCY PROTECTIVE SERVICES (*Code of Virginia*, § 63.2-1603).
- 4.2. **"ADULT ABUSE"** MEANS THE WILLFUL INFLICTION OF PHYSICAL PAIN, INJURY OR MENTAL ANGUISH OR UNREASONABLE CONFINEMENT OF AN ADULT (*Code of Virginia*, § 63.2-100).

- 4.3. **“MENTAL ANGUISH”** MEANS A STATE OF EMOTIONAL PAIN OR DISTRESS RESULTING FROM ACTIVITY (VERBAL OR BEHAVIORAL) OF A PERPETRATOR. THE INTENT OF THE ACTIVITY IS TO THREATEN OR INTIMIDATE, TO CAUSE SORROW OR FEAR, TO HUMILIATE, CHANGE BEHAVIOR OR RIDICULE. THERE MUST BE EVIDENCE THAT IT IS THE PERPETRATOR'S ACTIVITY THAT HAS CAUSED THE ADULT'S FEELINGS OF PAIN OR DISTRESS (22 VAC 40-740-10).
- 4.4. **“UNREASONABLE CONFINEMENT”** MEANS THE USE OF RESTRAINTS (PHYSICAL OR CHEMICAL), ISOLATION, OR ANY OTHER MEANS OF CONFINEMENT WITHOUT MEDICAL ORDERS, WHEN THERE IS NO EMERGENCY AND FOR REASONS OTHER THAN THE ADULT'S SAFETY OR WELL-BEING OR THE SAFETY OF OTHERS (22 VAC 40-740-10).
- 4.5. **“ADULT AT RISK”** is an adult who is in an endangering situation that may result in imminent injury, death, and/or loss without the provision of adult protective services.
- 4.6. **“ADULT PROTECTIVE SERVICES”** MEANS SERVICES PROVIDED BY THE LOCAL DEPARTMENT THAT ARE NECESSARY TO PROTECT AN ADULT FROM ABUSE, NEGLECT OR EXPLOITATION (*Code of Virginia*, § 63.2-100).
- “ADULT PROTECTIVE SERVICES”** MEANS THE RECEIPT, INVESTIGATION AND DISPOSITION OF COMPLAINTS AND REPORTS OF ADULT ABUSE, NEGLECT, AND EXPLOITATION OF ADULTS 18 YEARS OF AGE AND OLDER WHO ARE INCAPACITATED AND ADULTS 60 YEARS OF AGE AND OVER BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES. ADULT PROTECTIVE SERVICES ALSO INCLUDE THE PROVISION OF CASEWORK AND CARE MANAGEMENT BY THE LOCAL DEPARTMENT IN ORDER TO STABILIZE THE SITUATION OR TO PREVENT FURTHER ABUSE, NEGLECT, AND EXPLOITATION OF AN ADULT AT RISK OF ABUSE, NEGLECT AND EXPLOITATION. IF APPROPRIATE AND AVAILABLE, ADULT PROTECTIVE SERVICES MAY INCLUDE THE DIRECT PROVISION OF SERVICES BY THE LOCAL DEPARTMENT OR ARRANGING FOR HOME-BASED CARE, TRANSPORTATION, ADULT DAY SERVICES, MEAL SERVICE, LEGAL PROCEEDINGS, ALTERNATIVE PLACEMENTS AND OTHER ACTIVITIES TO PROTECT THE ADULT. (22 VAC 40-740-10).
- 4.7. **“AGGRAVATED SEXUAL BATTERY”** MEANS SEXUAL ABUSE IN WHICH: THE COMPLAINING WITNESS IS LESS THAN 13 YEARS OF AGE, OR THE ACT IS ACCOMPLISHED THROUGH THE USE OF THE COMPLAINING WITNESS'S MENTAL INCAPACITY, OR THE ACT IS ACCOMPLISHED AGAINST THE WILL OF THE COMPLAINING WITNESS BY FORCE, THREAT OR INTIMIDATION OR THROUGH THE USE OF THE COMPLAINING WITNESS'S PHYSICAL HELPLESSNESS, AND THE COMPLAINING WITNESS IS AT LEAST 13, BUT LESS THAN 15 YEARS OF AGE, OR THE ACCUSED CAUSES SERIOUS BODILY OR MENTAL INJURY TO THE COMPLAINING

WITNESS, OR THE ACCUSED USES OR THREATENS TO USE A DANGEROUS WEAPON (*Code of Virginia*, §18.2-67.3).

- 4.8. **“ANNUAL REPORT OF GUARDIAN”** means an annual report on the personal status of a person who is incapacitated for whom a guardian was appointed. The Court appointed guardian is to file the annual report of guardian with the local department of social services in the jurisdiction in which the guardian was appointed. The form to be used for the “ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON” is found in *Appendix J*.
- 4.9. **“ASAPS”** means the state system used to collect case and client information and provide case management for the Adult Service and Adult Protective Services Programs.
- 4.10. **“COLLATERAL”** MEANS A PERSON WHOSE PERSONAL OR PROFESSIONAL KNOWLEDGE MAY HELP CONFIRM OR REBUT THE ALLEGATIONS OF ADULT ABUSE, NEGLECT OR EXPLOITATION OR WHOSE INVOLVEMENT MAY HELP ENSURE THE SAFETY OF THE ADULT (22 VAC 40-740-10).
- 4.11. **“COMPLAINING WITNESS”** MEANS THE PERSON ALLEGED TO HAVE BEEN SUBJECTED TO RAPE, FORCIBLE SODOMY, INANIMATE OR ANIMATE OBJECT SEXUAL PENETRATION, MARITAL SEXUAL ASSAULT, AGGRAVATED SEXUAL BATTERY, OR SEXUAL BATTERY (*Code of Virginia*, § 18.2-67.10).
- 4.12. **“CONSERVATOR”** MEANS A PERSON APPOINTED BY THE COURT WHO IS RESPONSIBLE FOR MANAGING THE ESTATE AND FINANCIAL AFFAIRS OF AN INCAPACITATED PERSON AND WHERE THE CONTEXT PLAINLY INDICATES, INCLUDES A “LIMITED CONSERVATOR” OR A “TEMPORARY CONSERVATOR.” (*Code of Virginia*, § 37.2-1000).
- 4.13. **“CRIMINAL ABUSE”** MEANS (i) KNOWING AND WILLFUL CONDUCT THAT CAUSES PHYSICAL INJURY OR PAIN OR (ii) KNOWING AND WILLFUL USE OF PHYSICAL RESTRAINT, INCLUDING CONFINEMENT, AS PUNISHMENT, FOR CONVENIENCE OR AS A SUBSTITUTE FOR TREATMENT, EXCEPT WHERE SUCH CONDUCT OR PHYSICAL RESTRAINT, INCLUDING CONFINEMENT, IS A PART OF CARE OR TREATMENT AND IS IN FURTHERANCE OF THE HEALTH AND SAFETY OF THE INCAPACITATED PERSON (*Code of Virginia*, § 18.2-369).
- 4.14. **“CRIMINAL NEGLECT”** MEANS THE KNOWING AND WILLFUL FAILURE BY A RESPONSIBLE PERSON TO PROVIDE TREATMENT, CARE, GOODS OR SERVICES WHICH RESULTS IN INJURY TO THE HEALTH OR ENDANGERS THE SAFETY OF AN INCAPACITATED ADULT (*Code of Virginia*, § 18.2-369).

- 4.15. **"DEPARTMENT"** MEANS THE STATE DEPARTMENT OF SOCIAL SERVICES (*Code of Virginia*, § 63.2-100).
- 4.16. **"DISORDER"** INCLUDES ANY PHYSICAL OR MENTAL DISORDER OR IMPAIRMENT, WHETHER CAUSED BY INJURY, DISEASE, GENETICS, OR OTHER CAUSE (*Code of Virginia*, § 37.2-1100).
- 4.17. **"DISPOSITION"** MEANS THE DETERMINATION OF WHETHER OR NOT ADULT ABUSE, NEGLECT OR EXPLOITATION HAS OCCURRED (22 VAC 40-740-10).
- 4.18. **"DOCUMENTATION"** MEANS INFORMATION AND MATERIALS, WRITTEN OR OTHERWISE, CONCERNING ALLEGATIONS, FACTS AND EVIDENCE (22 VAC 40-740-10)
- 4.19. **"EMERGENCY"** MEANS THAT AN ADULT IS LIVING IN CONDITIONS THAT PRESENT A CLEAR AND SUBSTANTIAL RISK OF DEATH OR IMMEDIATE AND SERIOUS PHYSICAL HARM TO HIMSELF OR OTHERS (*Code of Virginia*, § 63.2-1603).
- 4.20. **"EXPLOITATION"** MEANS THE ILLEGAL USE OF AN INCAPACITATED ADULT OR HIS RESOURCES FOR ANOTHER'S PROFIT OR ADVANTAGE (*Code of Virginia*, § 63.2-100).
- "EXPLOITATION"** MEANS THE ILLEGAL USE OF AN INCAPACITATED ADULT OR HIS RESOURCES FOR ANOTHER'S PROFIT OR ADVANTAGE. THIS INCLUDES ACQUIRING AN ADULT'S RESOURCES THROUGH THE USE OF THE ADULT'S MENTAL OR PHYSICAL INCAPACITY; THE DISPOSITION OF THE INCAPACITATED ADULT'S PROPERTY BY A SECOND PARTY TO THE ADVANTAGE OF THE SECOND PARTY AND TO THE DETRIMENT OF THE INCAPACITATED ADULT; MISUSE OF FUNDS; ACQUIRING AN ADVANTAGE THROUGH THREATS TO WITHHOLD NEEDED SUPPORT OR CARE UNLESS CERTAIN CONDITIONS ARE MET; PERSUADING AN INCAPACITATED ADULT TO PERFORM SERVICES INCLUDING SEXUAL ACTS TO WHICH THE ADULT LACKS THE CAPACITY TO CONSENT (22 VAC 40-740-10).
- 4.21. **"FAMILY ABUSE"** MEANS ANY ACT INVOLVING VIOLENCE, FORCE, OR THREAT INCLUDING BUT NOT LIMITED TO, ANY FORCEFUL DETENTION, WHICH RESULTS IN BODILY INJURY OR PLACES ONE IN REASONABLE APPREHENSION OF BODILY INJURY AND WHICH IS COMMITTED BY A PERSON AGAINST SUCH PERSON'S FAMILY OR HOUSEHOLD MEMBER (*Code of Virginia*, § 16.1-228).

4.22. "FAMILY OR HOUSEHOLD MEMBER" MEANS:

- i. THE PERSON'S SPOUSE, WHETHER OR NOT HE OR SHE RESIDES IN THE SAME HOME WITH THE PERSON;
- ii. THE PERSON'S FORMER SPOUSE, WHETHER OR NOT HE OR SHE RESIDES IN THE SAME HOME WITH THE PERSON;
- iii. THE PERSON'S PARENTS, STEPPARENTS, CHILDREN, STEPCHILDREN, BROTHERS, SISTERS, HALF-BROTHERS, HALF-SISTERS, GRANDPARENTS AND GRANDCHILDREN, REGARDLESS OF WHETHER SUCH PERSONS RESIDE IN THE SAME HOME WITH THE PERSON;
- iv. THE PERSON'S MOTHER-IN-LAW, FATHER-IN-LAW, SONS-IN-LAW, DAUGHTERS-IN-LAW, BROTHERS-IN-LAW, AND SISTERS-IN-LAW, WHO RESIDE IN THE SAME HOME WITH THE PERSON;
- v. ANY INDIVIDUAL WHO HAS A CHILD IN COMMON WITH THE PERSON, WHETHER OR NOT THE PERSON AND THAT INDIVIDUAL HAVE BEEN MARRIED OR HAVE RESIDED TOGETHER AT ANY TIME; OR
- vi. ANY INDIVIDUAL WHO COHABITS OR WHO, WITHIN THE PREVIOUS 12 MONTHS, COHABITED WITH THE PERSON, AND ANY CHILDREN OF EITHER OF THEM THEN RESIDING IN THE SAME HOME WITH THE PERSON (*Code of Virginia*, § 16.1-228).

4.23. "FINANCIAL INSTITUTION STAFF" MEANS ANY EMPLOYEE OF A BANK, SAVINGS INSTITUTION, CREDIT UNION, SECURITIES FIRM, ACCOUNTING FIRM, OR INSURANCE COMPANY (*Code of Virginia*, § 63.2-1606).**4.24. "GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT WHO IS RESPONSIBLE FOR THE PERSONAL AFFAIRS OF AN INCAPACITATED PERSON, INCLUDING RESPONSIBILITY FOR MAKING DECISIONS REGARDING THE PERSON'S SUPPORT, CARE, HEALTH, SAFETY, HABILITATION, EDUCATION, THERAPEUTIC TREATMENT, AND, IF NOT INCONSISTENT WITH AN ORDER OF INVOLUNTARY ADMISSION, RESIDENCE. WHERE THE CONTEXT PLAINLY INDICATES, THE TERM INCLUDES A "LIMITED GUARDIAN" OR A "TEMPORARY GUARDIAN" (*Code of Virginia*, § 37.2-1000).****4.25. "GUARDIAN AD LITEM" MEANS AN ATTORNEY APPOINTED BY THE COURT TO REPRESENT THE INTEREST OF THE ADULT FOR WHOM A GUARDIAN OR CONSERVATOR IS REQUESTED. ON THE HEARING OF THE PETITION FOR APPOINTMENT OF A GUARDIAN OR CONSERVATOR, THE GUARDIAN AD LITEM ADVOCATES FOR THE ADULT WHO IS THE**

SUBJECT OF THE HEARING, AND HIS DUTIES ARE USUALLY CONCLUDED WHEN THE CASE IS DECIDED (22 VAC 40-740-10).

- 4.26. "INCAPABLE OF MAKING AN INFORMED DECISION"** MEANS UNABLE TO UNDERSTAND THE NATURE, EXTENT, OR PROBABLE CONSEQUENCES OF A PROPOSED TREATMENT OR UNABLE TO MAKE A RATIONAL EVALUATION OF THE RISKS AND BENEFITS OF THE PROPOSED TREATMENT AS COMPARED WITH THE RISKS AND BENEFITS OF ALTERNATIVES TO THE TREATMENT. PERSONS WITH DYSPHASIA OR OTHER COMMUNICATION DISORDERS WHO ARE MENTALLY COMPETENT AND ABLE TO COMMUNICATE SHALL NOT BE CONSIDERED INCAPABLE OF GIVING INFORMED CONSENT. (*Code of Virginia*, §37.2-1100).
- 4.27. "INCAPACITATED PERSON,"** MEANS ANY ADULT WHO IS IMPAIRED BY REASON OF MENTAL ILLNESS, MENTAL RETARDATION, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE OR OTHER CAUSES TO THE EXTENT THAT THE ADULT LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE, COMMUNICATE OR CARRY OUT RESPONSIBLE DECISIONS CONCERNING HIS OR HER WELL-BEING. THIS DEFINITION IS FOR THE PURPOSE OF ESTABLISHING AN ADULT'S ELIGIBILITY FOR ADULT PROTECTIVE SERVICES AND SUCH ADULT MAY OR MAY NOT HAVE BEEN FOUND INCAPACITATED THROUGH COURT PROCEDURES (22 VAC 40-740-10).
- 4.28. "INCAPACITATED PERSON"** MEANS AN ADULT WHO HAS BEEN FOUND BY A COURT TO BE INCAPABLE OF RECEIVING AND EVALUATING INFORMATION EFFECTIVELY OR RESPONDING TO PEOPLE, EVENTS, OR ENVIRONMENTS TO SUCH AN EXTENT THAT THE INDIVIDUAL LACKS THE CAPACITY TO (i) MEET THE ESSENTIAL REQUIREMENTS FOR HIS HEALTH, CARE, SAFETY, OR THERAPEUTIC NEEDS WITHOUT THE ASSISTANCE OR PROTECTION OF A GUARDIAN OR (ii) MANAGE PROPERTY OR FINANCIAL AFFAIRS OR PROVIDE FOR HIS SUPPORT OR FOR THE SUPPORT OF HIS LEGAL DEPENDENTS WITHOUT THE ASSISTANCE OR PROTECTION OF A CONSERVATOR. A FINDING THAT THE INDIVIDUAL DISPLAYS POOR JUDGMENT ALONE SHALL NOT BE CONSIDERED SUFFICIENT EVIDENCE THAT THE INDIVIDUAL IS AN INCAPACITATED PERSON WITHIN THE MEANING OF THIS DEFINITION (*Code of Virginia*, § 37.2-1000).
- This definition is used by the Court to determine need for the appointment of a guardian or a conservator.
- 4.29. "INTIMATE PARTS"** MEANS THE GENITALIA, ANUS, GROIN, BREAST, OR BUTTOCKS OF ANY PERSON (*Code of Virginia*, § 18.2-67.10).
- 4.30. "INVOLUNTARY PROTECTIVE SERVICES"** MEANS THOSE SERVICES AUTHORIZED BY THE COURT FOR AN ADULT WHO HAS BEEN

DETERMINED TO NEED PROTECTIVE SERVICES AND WHO HAS BEEN ADJUDICATED INCAPACITATED AND LACKING THE CAPACITY TO CONSENT TO RECEIVE THE NEEDED PROTECTIVE SERVICES (22 VAC 40-740-10).

- 4.31. “LACKS CAPACITY TO CONSENT”** MEANS A PRELIMINARY JUDGMENT OF A LOCAL DEPARTMENT OF SOCIAL SERVICES SOCIAL WORKER THAT AN ADULT IS UNABLE TO CONSENT TO RECEIVE NEEDED SERVICES FOR REASONS THAT RELATE TO EMOTIONAL OR PSYCHIATRIC PROBLEMS, MENTAL RETARDATION, DEVELOPMENTAL DELAY, OR OTHER REASONS WHICH IMPAIR THE ADULT’S ABILITY TO RECOGNIZE A SUBSTANTIAL RISK OF DEATH OR IMMEDIATE AND SERIOUS HARM TO HIMSELF. THE LACK OF CAPACITY TO CONSENT MAY BE EITHER PERMANENT OR TEMPORARY. THE WORKER MUST MAKE A PRELIMINARY JUDGMENT THAT THE ADULT LACKS CAPACITY TO CONSENT BEFORE PETITIONING THE COURT FOR AUTHORIZATION TO PROVIDE PROTECTIVE SERVICES ON AN EMERGENCY BASIS PURSUANT TO *Code of Virginia*, § 63.2-1609 (22 VAC-40-740-10).
- 4.32. “LEGALLY INCAPACITATED”** MEANS THAT THE PERSON WHO HAS BEEN ADJUDICATED INCAPACITATED BY A CIRCUIT COURT BECAUSE OF A MENTAL OR PHYSICAL CONDITION WHICH RENDERS HIM, EITHER WHOLLY OR PARTIALLY, INCAPABLE OF TAKING CARE OF HIMSELF OR HIS ESTATE (22 VAC 40-740-10).
- 4.33. “LEGITIMATE INTEREST”** MEANS A LAWFUL, DEMONSTRATED PRIVILEGE TO ACCESS THE INFORMATION AS DEFINED IN § 63.2-104 OF THE *CODE OF VIRGINIA*. (22 VAC 40-740-10).
- 4.34. “LOCAL DEPARTMENT”** MEANS THE LOCAL DEPARTMENT OF SOCIAL SERVICES OF ANY COUNTY OR CITY IN THIS COMMONWEALTH (*Code of Virginia*, § 63.2-100).
- 4.35. “LOCAL DIRECTOR”** MEANS THE DIRECTOR OR HIS DESIGNATED REPRESENTATIVE OF THE LOCAL DEPARTMENT OF THE CITY OR COUNTY (*Code of Virginia*, § 63.2-100).
- 4.36. “MARITAL SEXUAL ASSAULT”** MEANS A PERSON ENGAGES IN SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANALLINGUS, OR ANAL INTERCOURSE WITH HIS OR HER SPOUSE, OR PENETRATES THE LABIA MAJORA OR ANUS OF HIS OR HER SPOUSE WITH ANY OBJECT OTHER THAN FOR A BONA FIDE MEDICAL PURPOSE, OR CAUSES SUCH SPOUSE TO SO PENETRATE HIS OR HER OWN BODY WITH AN OBJECT, AND SUCH ACT IS ACCOMPLISHED AGAINST THE SPOUSE’S WILL BY FORCE OR A PRESENT THREAT OF FORCE OR INTIMIDATION OF OR AGAINST THE SPOUSE OR ANOTHER PERSON (*Code of Virginia*, § 18.2-67.2:1).

4.37. “NEGLECT” MEANS THAT AN ADULT IS LIVING UNDER SUCH CIRCUMSTANCES THAT HE IS NOT ABLE TO PROVIDE FOR HIMSELF OR IS NOT BEING PROVIDED SERVICES NECESSARY TO MAINTAIN HIS PHYSICAL AND MENTAL HEALTH AND THAT THE FAILURE TO RECEIVE SUCH NECESSARY SERVICES IMPAIRS OR THREATENS TO IMPAIR HIS WELL-BEING (*Code of Virginia*, § 63.2-100).

NEGLECT INCLUDES THE FAILURE OF A CAREGIVER OR ANOTHER RESPONSIBLE PERSON, TO PROVIDE FOR BASIC NEEDS TO MAINTAIN THE ADULT’S PHYSICAL AND MENTAL HEALTH AND WELL-BEING; AND IT INCLUDES THE ADULT’S NEGLECT OF SELF. NEGLECT INCLUDES, BUT IS NOT LIMITED TO:

1. THE LACK OF CLOTHING CONSIDERED NECESSARY TO PROTECT A PERSON’S HEALTH.

It is generally expected that an adult needs clothing to provide protection from excessive cold. Inadequate clothing would be clothing that is insufficient or inappropriate for the weather.

2. THE LACK OF FOOD NECESSARY TO PREVENT PHYSICAL INJURY OR TO MAINTAIN LIFE, INCLUDING FAILURE TO RECEIVE APPROPRIATE FOOD FOR ADULTS WITH CONDITIONS REQUIRING SPECIAL DIETS.
3. SHELTER THAT IS NOT STRUCTURALLY SAFE; HAS RODENTS OR OTHER INFESTATIONS WHICH MAY RESULT IN SERIOUS HEALTH PROBLEMS; OR DOES NOT HAVE A SAFE AND ACCESSIBLE WATER SUPPLY, SAFE HEAT SOURCE OR SEWAGE DISPOSAL. ADEQUATE SHELTER FOR AN ADULT WILL DEPEND ON THE IMPAIRMENTS OF AN ADULT; HOWEVER, THE ADULT MUST BE PROTECTED FROM THE ELEMENTS THAT WOULD SERIOUSLY ENDANGER HIS HEALTH (RAIN, COLD, OR HEAT) AND COULD RESULT IN SERIOUS ILLNESS OR DEBILITATING CONDITIONS.
4. INADEQUATE SUPERVISION BY A CAREGIVER (PAID OR UNPAID) WHO HAS BEEN DESIGNATED TO PROVIDE THE SUPERVISION NECESSARY TO PROTECT THE SAFETY AND WELL-BEING OF AN ADULT IN HIS CARE.
5. THE FAILURE OF PERSONS WHO ARE RESPONSIBLE FOR CAREGIVING TO SEEK NEEDED MEDICAL CARE OR TO FOLLOW MEDICALLY PRESCRIBED TREATMENT FOR AN ADULT, OR THE ADULT HAS FAILED TO OBTAIN SUCH CARE FOR HIMSELF. THE NEEDED MEDICAL CARE IS BELIEVED TO BE OF SUCH A NATURE AS TO RESULT IN PHYSICAL AND/OR MENTAL INJURY OR ILLNESS IF IT IS NOT PROVIDED.

6. MEDICAL NEGLECT INCLUDES BUT IS NOT LIMITED TO, THE WITHHOLDING OF MEDICATION OR AIDS NEEDED BY THE ADULT SUCH AS DENTURES, EYE GLASSES, HEARING AIDS, WALKER, ETC. IT ALSO INCLUDES THE UNAUTHORIZED ADMINISTRATION OF PRESCRIPTION DRUGS, OVER-OR UNDERMEDICATING, AND THE ADMINISTRATION OF DRUGS FOR OTHER THAN BONA FIDE MEDICAL REASONS, AS DETERMINED BY A LICENSED HEALTH PROFESSIONAL; AND
7. SELF-NEGLECT BY AN ADULT WHO IS NOT MEETING HIS OWN BASIC NEEDS DUE TO MENTAL AND/OR PHYSICAL IMPAIRMENTS. BASIC NEEDS REFER TO SUCH THINGS AS FOOD, CLOTHING, SHELTER, HEALTH, OR MEDICAL CARE (22 VAC 40-740-10).

4.38. "NOTIFICATION" MEANS INFORMING DESIGNATED AND APPROPRIATE INDIVIDUALS OF THE LOCAL DEPARTMENT'S ACTION AND THE INDIVIDUAL'S RIGHTS (22 VAC 40-740-10).

4.39. "PERSON INTERESTED IN THE WELFARE OF A PRINCIPAL" MEANS ANY MEMBER OF THE PRINCIPAL'S FAMILY; A PERSON WHO IS A CO-AGENT OR CO-ATTORNEY-IN-FACT, AN ALTERNATE AGENT OR ATTORNEY-IN-FACT, OR A SUCCESSOR AGENT OR ATTORNEY-IN-FACT DESIGNATED UNDER THE POWER OF ATTORNEY OR OTHER WRITING DESCRIBED IN *Code of Virginia*, § 11-9.1; AND, IF NONE OF THESE PERSONS IS REASONABLY AVAILABLE AND WILLING TO ACT, THE ADULT PROTECTIVE SERVICES UNIT OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES FOR THE CITY OR COUNTY WHERE THE PRINCIPAL RESIDES OR IS LOCATED AT THE TIME OF THE REQUEST. A "MEMBER OF THE PRINCIPAL'S FAMILY" MEANS AN ADULT WHO IS A PARENT, BROTHER OR SISTER, NIECE OR NEPHEW, CHILD OR OTHER DESCENDENT, SPOUSE OF A CHILD OF THE PRINCIPAL, AND SPOUSE OR SURVIVING SPOUSE OF THE PRINCIPAL (*Code of Virginia*, § 37.2-1018).

The above definition is relevant when there is reason to suspect that the perpetrator of abuse, neglect or exploitation is the principal's attorney-in-fact or other agent. APS workers are identified in the *Code of Virginia*, § 37.2-1018, as persons interested in the welfare of a principal, and may request access to information and records held by the agent or attorney-in-fact.

4.40. "PREPONDERANCE OF EVIDENCE" MEANS THE EVIDENCE AS A WHOLE SHOWS THAT THE FACTS ARE MORE PROBABLE AND CREDIBLE THAN NOT. IT IS EVIDENCE THAT IS OF GREATER WEIGHT OR MORE CONVINCING THAN THE EVIDENCE OFFERED IN OPPOSITION (22 VAC 40-740-10).

- 4.41. **“PRINCIPAL”** means the individual in whose interest the guardian, conservator, attorney-in-fact, or other agent acts.
- 4.42. **“PUBLIC CONSERVATOR”** IS A CONSERVATOR WHO IS PROVIDED THROUGH (i) A LOCAL OR REGIONAL PROGRAM DESIGNATED BY THE DEPARTMENT FOR THE AGING AS A PUBLIC CONSERVATOR PURSUANT TO ARTICLE 2 (§ 2.2-711.10) OF CHAPTER 7 OF TITLE 2.2 OR (ii) ANY LOCAL OR REGIONAL TAX-EXEMPT CHARITABLE ORGANIZATION ESTABLISHED PURSUANT TO § 501(c)(3) OF THE INTERNAL REVENUE CODE TO PROVIDE CONSERVATORIAL SERVICES TO AN INCAPACITATED PERSON. SUCH TAX-EXEMPT CHARITABLE ORGANIZATION SHALL NOT BE A PROVIDER OF DIRECT SERVICES TO THE INCAPACITATED PERSON (*Code of Virginia*, § 37.2-1000).
- 4.43. **“PUBLIC GUARDIAN”** IS A GUARDIAN PROVIDED THROUGH A LOCAL OR REGIONAL PROGRAM DESIGNATED BY THE DEPARTMENT FOR THE AGING AS A PUBLIC GUARDIAN PURSUANT TO ARTICLE 2 (§ 2.2-711.10) OF CHAPTER 24 OF TITLE 2.1 OR (ii) ANY LOCAL OR REGIONAL TAX-EXEMPT CHARITABLE ORGANIZATION ESTABLISHED PURSUANT TO § 501(c)(3) OF THE INTERNAL REVENUE CODE TO PROVIDE GUARDIAN SERVICES TO AN INCAPACITATED PERSON. SUCH TAX-EXEMPT CHARITABLE ORGANIZATION SHALL NOT BE A PROVIDER OF DIRECT SERVICES TO THE INCAPACITATED PERSON (*Code of Virginia*, § 37.2-1000).
- 4.44. **“REPORT”** MEANS AN ALLEGATION BY ANY PERSON THAT AN ADULT IS IN NEED OF PROTECTIVE SERVICES. THE TERM "REPORT" SHALL REFER TO BOTH REPORTS AND COMPLAINTS OF ABUSE, NEGLECT, AND EXPLOITATION OF ADULTS. THE REPORT MAY BE MADE ORALLY OR IN WRITING TO THE LOCAL DEPARTMENT OF SOCIAL SERVICES OR TO THE ADULT PROTECTIVE SERVICES HOTLINE (22 VAC 40-740-10).
- 4.45. **“RESPONDENT”** MEANS AN ALLEGEDLY INCAPACITATED PERSON FOR WHOM A PETITION FOR GUARDIANSHIP OR CONSERVATORSHIP HAS BEEN FILED (*Code of Virginia*, § 37.2-1000).
- 4.46. **“RESPONSIBLE PERSON”** MEANS A PERSON WHO HAS RESPONSIBILITY FOR THE CARE, CUSTODY OR CONTROL OF AN INCAPACITATED PERSON BY OPERATION OF LAW OR WHO HAS ASSUMED SUCH RESPONSIBILITY VOLUNTARILY, BY CONTRACT OR IN FACT (*Code of Virginia*, § 18.2-369).
- (The term “operation of law” refers to care, custody or control through some legal means such as guardianship or conservatorship.)
- 4.47. **“SERIOUS BODILY INJURY OR DISEASE”** SHALL INCLUDE BUT NOT BE LIMITED TO (i) DISFIGUREMENT, (ii) A FRACTURE, (iii) A SEVERE BURN OR LACERATION, (iv) MUTILATION, (v) MAIMING, OR (vi) LIFE-THREATENING

INTERNAL INJURIES OR CONDITIONS, WHETHER OR NOT CAUSED BY TRAUMA (*Code of Virginia*, § 18.2-369).

- 4.48. "SEXUAL ABUSE"** MEANS AN ACT COMMITTED WITH THE INTENT TO SEXUALLY MOLEST, AROUSE, OR GRATIFY ANY PERSON, WHERE: THE ACCUSED INTENTIONALLY TOUCHES THE COMPLAINING WITNESS'S INTIMATE PARTS OR MATERIAL DIRECTLY COVERING SUCH INTIMATE PARTS;

THE ACCUSED FORCES THE COMPLAINING WITNESS TO TOUCH THE ACCUSED'S, THE WITNESS'S OWN, OR ANOTHER PERSON'S INTIMATE PARTS OR MATERIAL DIRECTLY COVERING SUCH INTIMATE PARTS; OR THE ACCUSED FORCES ANOTHER PERSON TO TOUCH THE COMPLAINING WITNESS'S INTIMATE PARTS OR MATERIAL DIRECTLY COVERING SUCH INTIMATE PARTS (*Code of Virginia*, § 18.2-67.10).

- 4.49. "SEXUAL BATTERY"** MEANS ANY SEXUAL ABUSE AGAINST THE WILL OF THE COMPLAINING WITNESS BY FORCE, THREAT, INTIMIDATION, OR RUSE (*Code of Virginia*, § 18.2-67.4).

- 4.50. "UNIFORM ASSESSMENT INSTRUMENT"** (UAI) means the Department's designated assessment form.

- 4.51. "VOLUNTARY PROTECTIVE SERVICES"** MEANS THOSE SERVICES PROVIDED TO AN ADULT WHO, AFTER INVESTIGATION BY THE LOCAL DEPARTMENT, IS DETERMINED TO BE IN NEED OF PROTECTIVE SERVICES AND CONSENTS TO RECEIVING THE SERVICES SO AS TO PREVENT FURTHER ABUSE, NEGLECT, AND EXPLOITATION OF AN ADULT AT RISK OF ABUSE, NEGLECT AND EXPLOITATION (22 VAC 40-740-10).

5. ADULT PROTECTIVE SERVICES INTAKE

5.1. Accepting Reports

Adult Protective Services (APS) intake includes those activities whereby reports concerning the abuse, neglect or exploitation of adults are received by local agencies, evaluated for appropriateness against the criteria for a valid report, and either accepted for investigation or determined invalid and not appropriate for an APS investigation.

UPON RECEIPT OF THE REPORT PURSUANT TO § 63.2-1606, THE LOCAL DEPARTMENT SHALL DETERMINE THE VALIDITY OF SUCH REPORT AND SHALL INITIATE AN INVESTIGATION WITHIN 24 HOURS OF THE TIME THE REPORT IS RECEIVED IN THE LOCAL DEPARTMENT (*Code of Virginia*, § 63.2-1605).

Valid reports that adults are at risk of abuse, neglect or exploitation must be accepted and investigated to determine whether or not the person needs protective services and, if so, what services are needed.

THE LOCAL DEPARTMENT SHALL REFER ANY APPROPRIATE MATTER AND ALL RELEVANT DOCUMENTATION TO THE APPROPRIATE LICENSING, REGULATORY, OR LEGAL AUTHORITY FOR ADMINISTRATIVE ACTION OR CRIMINAL INVESTIGATION (*Code of Virginia*, § 63.2-1605).

5.2. Adult Protective Services Reports

Local departments of social services must accept and investigate all valid reports that allege abuse, neglect or exploitation of adults and adults at risk of alleged abuse, neglect or exploitation. The report shall be reduced to writing within 72 hours by completing the appropriate screens in ASAPS (See ASAPS User's Manual). A copy of the "Printable" format can be found in Appendix A.

5.3. Source of Reports

5.3.1. Mandated Reporters

MATTERS GIVING REASON TO SUSPECT THE ABUSE, NEGLECT OR EXPLOITATION OF ADULTS SHALL BE REPORTED IMMEDIATELY UPON THE REPORTING PERSON'S DETERMINATION THAT THERE IS SUCH REASON TO SUSPECT (*Code of Virginia*, § 63.2-1606).

THE REPORT SHALL BE MADE IN ACCORDANCE WITH SUBSECTION A TO THE LOCAL DEPARTMENT OF THE COUNTY OR CITY WHEREIN THE ADULT RESIDES OR WHEREIN THE ADULT ABUSE, NEGLECT OR EXPLOITATION IS BELIEVED TO HAVE OCCURRED OR TO THE ADULT PROTECTIVE SERVICES HOTLINE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ELIMINATE OR SUPERSEDE ANY OTHER OBLIGATION TO REPORT AS REQUIRED BY LAW (*Code of Virginia*, § 63.2-1606).

Virginia law requires that certain persons having reason to suspect that an adult is abused, neglected, or exploited, report the matter immediately to the local department of social services. Persons required to make reports of suspected abuse, neglect or exploitation include:

ANY PERSON LICENSED, CERTIFIED, OR REGISTERED BY HEALTH REGULATORY BOARDS LISTED IN 54.1-2503, WITH THE EXCEPTION OF PERSONS LICENSED BY THE BOARD OF VETERINARY MEDICINE;

Board of Nursing: Registered Nurse (RN); Licensed Nurse Practitioner (LNP); Licensed Practical Nurse (LPN); Clinical Nurse Specialist; Certified Massage Therapist; Certified Nurse Aide (CNA)

Board of Medicine: Doctor of Medicine and Surgery, Doctor of Osteopathic Medicine; Doctor of Podiatry; Doctor of Chiropractic; Interns and Residents; University Limited Licensee; Physician Assistant; Respiratory Therapist;

Occupational Therapist; Radiological Technologist; Radiological Technologist Limited; Licensed Acupuncturists; Certified Athletic Trainers

Board of Pharmacy: Pharmacists; Pharmacy Interns; Permitted Physicians; Medical Equipment Suppliers; Restricted Manufacturers; Humane Societies; Physicians Selling Drugs; Wholesale Distributors; Warehousemen, Pharmacy Technicians

Board of Dentistry: Dentists and Dental Hygienists Holding a License, Certification, or Permit Issued by the Board

Board of Funeral Directors and Embalmers: Funeral Establishments; Funeral Services Providers; Funeral Directors; Funeral Embalmers; Resident Trainees; Crematories; Surface Transportation and Removal Services; Courtesy Card Holders

Board of Optometry: Optometrist

Board of Counseling: Licensed Professional Counselors; Certified Substance Abuse Counselors; Certified Substance Abuse Counseling Assistants; Certified Rehabilitation Providers; Marriage and Family Therapists; Licensed Substance Abuse Treatment Practitioners

Board of Psychology: School Psychologist; Clinical Psychologist; Applied Psychologist; Sex Offender Treatment Provider; School Psychologist – Limited

Board of Social Work: Registered Social Worker; Associate Social Worker; Licensed Social Worker; Licensed Clinical Social Worker

Board of Long-Term Care Administrators: Nursing Home Administrator

Board of Audiology and Speech Pathology: Audiologists; Speech-Language Pathologists; School Speech-language Pathologists

Board of Physical Therapy: Physical Therapist; Physical Therapist Assistant.

ANY MENTAL HEALTH SERVICES PROVIDER AS DEFINED IN § 54.1-2400.1;

ANY EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFIED BY THE BOARD OF HEALTH PURSUANT TO § 32.1-111.5;

ANY GUARDIAN OR CONSERVATOR OF AN ADULT;

ANY PERSON EMPLOYED BY OR CONTRACTED WITH A PUBLIC OR PRIVATE AGENCY OR FACILITY AND WORKING WITH ADULTS IN AN ADMINISTRATIVE, SUPPORTIVE OR DIRECT CARE CAPACITY;

ANY PERSON PROVIDING FULL, INTERMITTENT, OR OCCASIONAL CARE TO AN ADULT FOR COMPENSATION, INCLUDING BUT NOT LIMITED TO COMPANION, CHORE, HOMEMAKER, AND PERSONAL CARE WORKERS; AND ANY LAW-ENFORCEMENT OFFICER (*Code of Virginia*, § 63.2-1606).

5.3.2. Requirements of Employers of Mandated Reporters

AN EMPLOYER OF A MANDATED REPORTER SHALL NOT PROHIBIT A MANDATED REPORTER FROM REPORTING DIRECTLY TO THE LOCAL DEPARTMENT OR TO THE ADULT PROTECTIVE SERVICES HOTLINE (*Code of Virginia*, § 63.2-1606).

EMPLOYERS WHOSE EMPLOYEES ARE MANDATED REPORTERS SHALL NOTIFY EMPLOYEES UPON HIRING OF THE REQUIREMENT TO REPORT (*Code of Virginia*, § 63.2-1606).

Local departments of social services are encouraged to notify and provide training directly to mandated reporters in their communities as well as to their employers to supplement state office efforts to inform mandated reporters of their responsibilities. A form that employers may use to document notification to their mandated reporter staff is found in Appendix V ("Notification for Employers of Mandated Reporters"); use of this form is optional.

5.3.3. Duplicate Reports from Mandated Reporters

A mandated reporter has fulfilled the statutory responsibility to report suspected abuse, neglect, and exploitation to APS when the following information has been provided to the local department of social services or to the toll-free, 24-hour APS hotline at **1-888-832-3858** (1-888-83ADULT):

- 1) A description of the situation, and
- 2) The information that caused the suspicion of abuse, neglect or exploitation.

A mandated reporter who makes a report has no responsibility to make additional reports when the situation of the adult who is the subject of the report remains unchanged and when the mandated reporter has not received written notification from APS that the APS investigation has been completed.

When additional incidents of abuse, neglect or exploitation are suspected, or when there is additional information relative to the original report, the mandated reporter is obligated to make an additional report or make the additional information available to the APS worker as prescribed by law (*Code of Virginia*, § 63.2-1606).

5.3.4. Exceptions to Immediate Reporting Requirements for Mandated Reporters

NO PERSON OR ENTITY SHALL BE OBLIGATED TO REPORT ANY MATTER IF THE PERSON OR ENTITY HAS ACTUAL KNOWLEDGE THAT THE SAME MATTER HAS ALREADY BEEN REPORTED TO THE LOCAL DEPARTMENT OR TO THE ADULT PROTECTIVE SERVICES HOTLINE. (*Code of Virginia*, § 63.2-1606).

IF A PERSON REQUIRED TO REPORT UNDER THIS SECTION RECEIVES INFORMATION REGARDING ABUSE, NEGLECT OR EXPLOITATION WHILE PROVIDING PROFESSIONAL SERVICES IN A HOSPITAL, NURSING FACILITY OR SIMILAR INSTITUTION, THEN HE MAY, IN LIEU OF REPORTING, NOTIFY THE PERSON IN CHARGE OF THE INSTITUTION OR HIS DESIGNEE, WHO SHALL REPORT SUCH INFORMATION, IN ACCORDANCE WITH THE INSTITUTION'S POLICIES AND PROCEDURES FOR REPORTING SUCH MATTERS, IMMEDIATELY UPON HIS DETERMINATION THAT THERE IS REASON TO SUSPECT ABUSE, NEGLECT OR EXPLOITATION. (*Code of Virginia*, § 63.2-1606).

Mandated reporters are encouraged to document when they suspect adult abuse, neglect or exploitation and have reported it to the person in charge of the institution in accordance with the institution's policies and procedures for reporting such matters.

MEDICAL FACILITIES INSPECTORS OF THE DEPARTMENT OF HEALTH ARE EXEMPT FROM REPORTING SUSPECTED ABUSE IMMEDIATELY WHILE CONDUCTING FEDERAL INSPECTION SURVEYS IN ACCORDANCE WITH § 1846 OF TITLE XVIII AND TITLE XIX OF THE SOCIAL SECURITY ACT, AS AMENDED, OF CERTIFIED NURSING FACILITIES AS DEFINED IN § 32.1-123 (*Code of Virginia*, § 63.2-1606).

Findings of abuse, neglect or exploitation by the medical facilities inspectors shall be made known to APS after the exit interview with the facility. Based on the information, the APS worker will decide on a case-by-case basis if additional follow-up services are needed for residents who may be at risk of further abuse, neglect or exploitation.

5.3.5. Reports of Deaths That Are Results of Abuse and Neglect

ANY MANDATED REPORTER WHO HAS REASONABLE CAUSE TO SUSPECT THAT AN ADULT DIED AS A RESULT OF ABUSE OR NEGLECT SHALL IMMEDIATELY REPORT SUCH SUSPICION TO THE APPROPRIATE MEDICAL EXAMINER AND TO THE APPROPRIATE LAW-ENFORCEMENT AGENCY, NOTWITHSTANDING THE EXISTENCE OF A DEATH CERTIFICATE SIGNED BY A LICENSED PHYSICIAN. THE MEDICAL EXAMINER AND THE LAW-ENFORCEMENT AGENCY SHALL RECEIVE THE REPORT AND

DETERMINE IF AN INVESTIGATION IS WARRANTED. THE MEDICAL EXAMINER MAY ORDER AN AUTOPSY. IF AN AUTOPSY IS CONDUCTED, THE MEDICAL EXAMINER SHALL REPORT THE FINDINGS TO LAW ENFORCEMENT, AS APPROPRIATE, AND TO THE LOCAL DEPARTMENT OR TO THE ADULT PROTECTIVE SERVICES HOTLINE (*Code of Virginia*, § 63.2-1606).

5.3.6. Failure to Report

ANY PERSON WHO FAILS TO MAKE A REQUIRED REPORT OR NOTIFICATION PURSUANT TO SUBSECTION A SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$500 FOR THE FIRST FAILURE AND NOT LESS THAN \$100 NOR MORE THAN \$1,000 FOR ANY SUBSEQUENT FAILURES. CIVIL PENALTIES UNDER SUBDIVISION A 7 (LAW ENFORCEMENT) SHALL BE DETERMINED BY A COURT OF COMPETENT JURISDICTION, IN ITS DISCRETION. ALL OTHER CIVIL PENALTIES UNDER THIS SECTION SHALL BE DETERMINED BY THE COMMISSIONER OR HIS DESIGNEE. THE BOARD SHALL ESTABLISH BY REGULATION A PROCESS FOR IMPOSING AND COLLECTING CIVIL PENALTIES, AND A PROCESS FOR APPEAL OF THE IMPOSITION OF SUCH PENALTY PURSUANT TO § 2.2-4026 OF THE ADMINISTRATIVE PROCESS ACT (*Code of Virginia*, § 63.2-1606).

See Appendix W ("Imposition of Civil Penalty") for the procedures for initiating the referral to the commissioner.

5.3.7. Types of Reports

5.3.7.1. Sexual Abuse, Criminal Abuse and Neglect, Other Criminal Activity

LOCAL DEPARTMENTS OR THE ADULT PROTECTIVE SERVICES HOTLINE, UPON RECEIVING THE INITIAL REPORT PURSUANT TO § 63.2-1606 SHALL IMMEDIATELY NOTIFY THE LOCAL LAW-ENFORCEMENT AGENCY WHERE THE ADULT RESIDES, OR WHERE THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION TOOK PLACE, OR IF THESE PLACES ARE UNKNOWN, THEN WHERE THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION WAS DISCOVERED, WHEN IN RECEIPT OF A REPORT DESCRIBING ANY OF THE FOLLOWING:

- SEXUAL ABUSE AS DEFINED IN §18.2-67.10
- DEATH, SERIOUS BODILY INJURY OR DISEASE AS DEFINED IN § 18.2-369 THAT IS BELIEVED TO BE THE RESULT OF ABUSE OR NEGLECT; OR
- ANY OTHER CRIMINAL ACTIVITY INVOLVING ABUSE OR NEGLECT THAT PLACES THE ADULT IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM (*Code of Virginia*, § 63.2-1605).

The APS worker must contact the local law enforcement agency and coordinate the investigation. If the law enforcement agency declines to participate in the investigation, the APS worker must continue the investigation without the participation of the law enforcement agency.

5.3.7.2. Financial Institution Staff Reports

ANY FINANCIAL INSTITUTION STAFF WHO SUSPECTS THAT AN ADULT HAS BEEN EXPLOITED FINANCIALLY MAY REPORT SUCH SUSPECTED EXPLOITATION TO THE LOCAL DEPARTMENT OF THE COUNTY OR CITY WHEREIN THE ADULT RESIDES OR WHEREIN THE EXPLOITATION IS BELIEVED TO HAVE OCCURRED OR TO THE ADULT PROTECTIVE SERVICES HOTLINE. FOR PURPOSES OF THIS SECTION, FINANCIAL INSTITUTION STAFF MEANS ANY EMPLOYEE OF A BANK, SAVINGS INSTITUTION, CREDIT UNION, SECURITIES FIRM, ACCOUNTING FIRM, OR INSURANCE COMPANY (*Code of Virginia, § 63.2-1606*).

5.3.7.3. Voluntary Reports

ANY PERSON OTHER THAN THOSE SPECIFIED IN SUBSECTION A WHO SUSPECTS THAT AN ADULT IS AN ABUSED, NEGLECTED, OR EXPLOITED ADULT MAY REPORT THE MATTER TO THE LOCAL DEPARTMENT OF THE COUNTY OR CITY WHEREIN THE ADULT RESIDES OR WHEREIN THE ABUSE, NEGLECT OR EXPLOITATION IS BELIEVED TO HAVE OCCURRED OR TO THE ADULT PROTECTIVE SERVICES HOTLINE (*Code of Virginia, § 63.2-1606*).

5.3.7.4. Anonymous Reports

Any individual has the right to make an anonymous report of suspected abuse, neglect or exploitation or a report that an adult is at risk of abuse, neglect or exploitation. No one can require that the reporter disclose his/her identity as a condition for accepting the report. All valid reports must be investigated regardless of whether the reporter is identified. If a mandated reporter reports anonymously, he/she must be encouraged to document such.

5.3.8. Self-Reports

Requests for protective services come in many forms and the words “neglect, abuse, or exploitation” may not always be used by the adult or the reporter requesting services. The fact that an adult requests services for himself/herself does not necessarily mean that he/she is able to protect himself/herself. A self-referral for protective services is appropriate when the described condition falls

within the definition of an adult being abused, neglected, or exploited, or an adult at risk of abuse, neglect or exploitation.

5.3.9. Domestic Violence Reports

When the alleged abuser is reported to be a family or household member (as defined in *Code of Virginia*, § 16.1-228), of the adult who is suspected to be abused, neglected, or exploited, an APS report shall be taken if the alleged victim is 60 years of age or older or is 18 years of age or older and incapacitated and the other criteria for a valid report are met. (See Section 7 for information on valid reports.)

A 24-hour “Family Violence and Sexual Assault Hotline” for Virginia is available at **1-800-838-8238**. All domestic violence survivors and their families should be provided this number to assist them in obtaining assistance. Services in the community may include temporary emergency housing, crisis intervention, crisis counseling, emergency transportation, information and referral, and legal aid. In a valid report, the APS worker should coordinate with domestic violence professionals.

5.3.10. Agency/Worker Generated Reports

When a social worker recognizes that the circumstances in an open case meet the criteria for a valid APS report, the APS worker completes the appropriate screens in ASAPS and follows procedures for investigating a report that an adult is suspected to be abused, neglected or exploited, or at risk of abuse, neglect or exploitation.

5.3.11. Reports of Ongoing Cases

When a valid report is received on the adult who is the recipient of services in an on-going case, the APS worker completes the appropriate screens in ASAPS and follows procedures for investigating a report that an adult is suspected to be abused, neglected or exploited or at risk of abuse, neglect or exploitation.

5.3.12. Reports that the Adult Is Incapable of Making and Signing an Application for Medicaid

Medicaid policy states that eligibility workers will report to APS when they suspect that an adult applying for Medicaid (or a recipient of Medicaid during a redetermination) is incapacitated and incapable of understanding the Medicaid eligibility process, and the adult has no authorized representative or substitute family member who is willing and able to apply or sign on his/her behalf. The report is made by using the “MEDICAID REFERRAL TO APS TO REQUEST ASSESSMENT FOR GUARDIANSHIP” form found in Appendix R-1. The purpose of this referral to APS is to begin an investigation to determine whether the person is abused, neglected, or exploited or at risk of abuse, neglect or exploitation. If the

need for guardianship is identified as a protective service need, the cost of petitioning is reimbursable to the local department through the Department of Medical Assistance Services (See Appendices R-1 and R-2 for the forms to be used for Medicaid referrals to APS to request assessment for guardianship).

5.3.13. APS Hotline Reports

All APS reports that are phoned to the 24-hour hotline are forwarded to the local department of jurisdiction on-call worker or to another person or agency designated by the department. If the APS report indicates that sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm has occurred, as those terms are defined in the criminal section § 18.2-369 of the *Code of Virginia*, the APS hotline will immediately report the case to local law enforcement. The local department has responsibility for determining if the report received through the hotline is a valid report.

The date/time that the report is received by the local department from the hotline should be used to determine the timeframe for initiating an investigation.

Statewide APS Hotline 1- 888- 832- 3858 (toll-free)

Richmond area and Out-of-State **1- 804- 371- 0896**

5.3.14. When an Annual Report Is Not Filed or Is Filed with the Agency by a Guardian and Creates Reason to Suspect

The local department of social services has the responsibility to review the “ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON” (Appendix J) for all guardianships adjudicated in its jurisdiction or transferred into its jurisdiction. The appropriate ASAPS screens must be completed and all APS procedures followed, if:

- 1) The contents of the report provide reason to suspect that the subject of the annual report is abused, neglected or exploited; or
- 2) The subject of the annual report is determined to be at risk of abuse, neglect or exploitation.
- 3) If, after a good faith effort by the local department to obtain the guardian's report, the guardian continues to fail to submit the report within four months from the last day of the reporting period.

(See Appendix G, “PROTECTING VULNERABLE ADULTS THROUGH GUARDIANSHIP AND/OR CONSERVATORSHIP,” Sections 14.6-14.9.)

5.3.15. State and Local Authorities and Agencies

ALL LAW-ENFORCEMENT DEPARTMENTS AND OTHER STATE AND LOCAL DEPARTMENTS, AGENCIES, AUTHORITIES, AND INSTITUTIONS SHALL COOPERATE WITH EACH ADULT PROTECTIVE SERVICES WORKER OF A

LOCAL DEPARTMENT IN THE DETECTION, INVESTIGATION AND PREVENTION OF ADULT ABUSE, NEGLECT, AND EXPLOITATION (*Code of Virginia*, § 63.2-1606).

5.4. Rights of Persons Who Report

5.4.1. Immunity

ANY PERSON WHO MAKES A REPORT OR PROVIDES RECORDS OR INFORMATION PURSUANT TO SUBSECTION A (mandated reporters), C (financial institution staff) OR D (voluntary reporters), OR WHO TESTIFIES IN ANY JUDICIAL PROCEEDING ARISING FROM SUCH REPORT, RECORDS OR INFORMATION, OR WHO TAKES OR CAUSES TO BE TAKEN WITH THE ADULT'S OR THE ADULT'S LEGAL REPRESENTATIVE'S INFORMED CONSENT PHOTOGRAPHS, VIDEO RECORDINGS, OR APPROPRIATE MEDICAL IMAGING OF THE ADULT WHO IS SUBJECT OF A REPORT SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY ON ACCOUNT OF SUCH REPORT, RECORDS, INFORMATION, PHOTOGRAPHS, VIDEO RECORDINGS, APPROPRIATE MEDICAL IMAGING OR TESTIMONY, UNLESS SUCH PERSON ACTED IN BAD FAITH OR WITH A MALICIOUS PURPOSE (*Code of Virginia*, § 63.2-1606).

5.4.2. Malicious Reports

ANY PERSON 14 YEARS OF AGE OR OLDER WHO MAKES OR CAUSES TO BE MADE A REPORT OF ADULT ABUSE, NEGLECT OR EXPLOITATION THAT HE (or she) KNOWS TO BE FALSE SHALL BE GUILTY OF A CLASS 4 MISDEMEANOR. ANY SUBSEQUENT CONVICTION OF THIS PROVISION SHALL BE A CLASS 2 MISDEMEANOR (*Code of Virginia*, § 63.2-1606).

5.4.3. Protecting the Identity of the Reporter

THE REPORT AND EVIDENCE RECEIVED BY THE LOCAL DEPARTMENT AND ANY WRITTEN FINDINGS, EVALUATIONS, RECORDS, AND RECOMMENDED ACTIONS SHALL BE CONFIDENTIAL AND SHALL BE EXEMPT FROM DISCLOSURE REQUIREMENTS OF THE VIRGINIA FREEDOM OF INFORMATION ACT (§2.2-3700) (*Code of Virginia*, § 63.2-1605).

- 1) Reports, documentary evidence, and other information gathered in the course of an APS investigation are exempt from the Virginia Freedom of Information Act (FOIA) (*Code of Virginia*, § 2.2-3705 (15)). APS records are not open to inspection by the public
- 2) THE IDENTITY OF THE PERSON WHO REPORTED THE SUSPECTED ABUSE, NEGLECT OR EXPLOITATION SHALL BE HELD CONFIDENTIAL UNLESS THE REPORTER AUTHORIZES THE

DISCLOSURE OF HIS IDENTITY OR DISCLOSURE IS ORDERED BY THE COURT (22 VAC 40-740-50).

The identity of the reporter shall be held confidential unless the reporter authorizes the disclosure of his/her identity or disclosure is ordered by the court. The APS worker should request the reporter's consent to release the reporter's identifying information to appropriate regulatory agencies if needed during the investigation. The oral or written consent should be noted in the APS assessment narrative. Written consent should be obtained, if possible. If the reporter refuses to grant such release, the APS worker must respect the reporter's decision and shall not release the information.

- 3) CRIMINAL INVESTIGATIVE REPORTS RECEIVED FROM LAW-ENFORCEMENT AGENCIES SHALL NOT BE FURTHER DISSEMINATED BY THE INVESTIGATING AGENCY NOR SHALL THEY BE SUBJECT TO PUBLIC DISCLOSURE (*Code of Virginia*, § 63.2-1606).
- 4) THE LOCAL DEPARTMENT SHALL DISCLOSE ALL RELEVANT INFORMATION TO REPRESENTATIVES OF THE AGENCIES IDENTIFIED IN SUBSECTION C (SEE SECTION 38.1) EXCEPT THE IDENTITY OF THE PERSON WHO REPORTED THE ABUSE, NEGLECT OR EXPLOITATION UNLESS THE REPORTER AUTHORIZES THE DISCLOSURE OF HIS IDENTITY OR THE DISCLOSURE IS ORDERED BY THE COURT (22 VAC 40-740-50).

5.4.4. Information to Be Given to the Reporter

The social worker receiving the report should explain to the person making the report:

The rights of persons making a report (i.e., immunity, protection of identity);

The local department's responsibility to contact the person making the report to notify him/her that the report has been investigated; and

If the report alleges sexual abuse, criminal abuse and neglect, or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm, the local department is required to report such suspected abuse, neglect or exploitation to the local law-enforcement agency and to the medical examiner, as appropriate.

5.4.5. Additional Information To Be Given To Mandated Reporters

All mandated reporters identified in the *Code of Virginia*, § 63.2-1606, should be informed of their responsibility under that *Code* section to disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation and,

upon request, make available to the investigating APS workers any records or reports that document the basis for their suspicion of abuse, neglect or exploitation.

The requirement to make pertinent information available is without regard to who made the protective services report (i.e., any mandated reporter must make pertinent information available to the APS worker investigating the report whether he/she or some other person made the protective services report).

UPON REQUEST, ANY PERSON REQUIRED TO MAKE THE REPORT SHALL MAKE AVAILABLE TO THE ADULT PROTECTIVE SERVICES WORKER AND THE LOCAL DEPARTMENT INVESTIGATING THE REPORTED CASE OF ADULT ABUSE, NEGLECT OR EXPLOITATION ANY INFORMATION, RECORDS OR REPORTS WHICH DOCUMENT THE BASIS FOR THE REPORT. ALL PERSONS REQUIRED TO REPORT SUSPECTED ADULT ABUSE, NEGLECT OR EXPLOITATION SHALL COOPERATE WITH THE INVESTIGATING ADULT PROTECTIVE SERVICES WORKER OF A LOCAL DEPARTMENT AND SHALL MAKE INFORMATION, RECORDS AND REPORTS WHICH ARE RELEVANT TO THE INVESTIGATION AVAILABLE TO SUCH WORKER TO THE EXTENT PERMITTED BY STATE AND FEDERAL LAW (*Code of Virginia*, § 63.2-1606).

Federal regulations at §164.512 for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorizes covered entities to disclose health information that “is required by law and disclosure complies with and is limited to the relevant requirements of the law.”

All providers of medical services are also authorized to disclose records of a patient to APS under the *Code of Virginia*, § 32.1-127.1:03.D.6 (Patient Health Records Privacy).

5.5. Confidentiality

See Volume VII, Section I, Chapter C, for general policy on confidentiality. That policy applies to all APS cases. In addition, policy found in § 37.0 of this chapter applies to APS cases and should be used in conjunction with Volume VII, Section I, Chapter C.

6. INTAKE INTERVIEW

The primary purpose of the intake interview is to explore with the reporter the allegations being made in order to determine whether there is reasonable cause to suspect that adult abuse, neglect or exploitation is occurring or has occurred or that the adult is at risk of abuse, neglect or exploitation and whether an emergency exists. Sufficient information must be gathered to evaluate the concerns of the person making the report and to judge whether the report is valid. In taking a report, the social worker should make every effort to enable the reporter to make as factual a report as possible.

The intake interviewer shall obtain as much of the following information as is known by the person making the report:

- 1) Name and location of the adult and directions to the adult's place of residence;
- 2) Names and relationships of other members of the household;
- 3) Age of the adult;
- 4) Alleged incapacity of the adult (see the definition of "incapacitated person" in section 4 of this chapter);
- 5) Name and address of caregiver, if any;
- 6) The circumstances that describe the abuse, neglect or exploitation, or the reason(s) the reporter suspects the adult is at risk of abuse, neglect or exploitation;
- 7) Whether an emergency exists;
- 8) Identity of person(s) who witnessed the incident, their addresses and telephone numbers;
- 9) Any information about previous abuse, neglect or exploitation of the adult;
- 10) The name, address, and relationship of any other person(s) or agencies who might be concerned or have knowledge of the adult;
- 11) Name of the adult's physician(s) and pharmacies;
- 12) Known medication(s) and/or treatment(s);
- 13) Identity and relationship of the alleged perpetrator;
- 14) Living arrangement of the adult (e.g., in own home, lives with spouse, lives with alleged perpetrator, lives alone, etc.);
- 15) Name, address, and phone number of person reporting if the reporter is willing to give this information;
- 16) Source of the reporter's information;
- 17) Any other information that might be helpful in establishing the cause of the suspected abuse, neglect or exploitation or the risk of abuse, neglect or exploitation;
- 18) Permission to give the reporter's name and phone number to the appropriate regulatory authority; and,
- 19) The adult's income and other resources, if known.

7. DETERMINING VALIDITY OF REPORTS

LOCAL DEPARTMENTS SHALL CONSIDER VALID ANY REPORT MEETING ALL OF THE FOLLOWING CRITERIA: (i) THE SUBJECT OF THE REPORT IS AN ADULT AS DEFINED IN THIS ARTICLE (see definition of "Adult" below), (ii) THE REPORT CONCERNS A SPECIFIC ADULT AND THERE IS ENOUGH INFORMATION TO LOCATE THE ADULT, AND (iii) THE REPORT DESCRIBES THE CIRCUMSTANCES OF THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION (*Code of Virginia*, § 63.2-1605).

7.1.Characteristics of a Valid Report of Adult Abuse, Neglect or exploitation

The following characteristics must exist simultaneously to meet criteria for a valid APS report:

- 1) Adult must be at least 60 years or older or age 18 to 59 and incapacitated;
- 2) Adult must be living and identifiable;

- 3) Circumstances must allege abuse, neglect or exploitation; and
- 4) The local department must be the agency of jurisdiction.

7.1.1. Age/Incapacity

ADULT MEANS ANY PERSON 60 YEARS OF AGE OR OLDER, OR ANY PERSON 18 YEARS OF AGE OR OLDER WHO IS INCAPACITATED AND WHO RESIDES IN THE COMMONWEALTH; PROVIDED, HOWEVER, "ADULT" MAY INCLUDE QUALIFYING NONRESIDENTS WHO ARE TEMPORARILY IN THE COMMONWEALTH AND WHO ARE IN NEED OF TEMPORARY OR EMERGENCY PROTECTIVE SERVICES (*Code of Virginia*, § 63.2-1603).

7.1.2. Age

Adults 60 years of age or older who are suspected of being abused, neglected, or exploited or at risk of abuse, neglect or exploitation are eligible for protective services without any other qualifiers.

7.1.3. Incapacity

In determining the validity of the report, incapacity is an APS worker's judgment (see definition of "incapacitated person" in Section 4 of this chapter).

Adults 18 years of age or older who are incapacitated and who are suspected of being abused, neglected, or exploited or at risk of abuse, neglect or exploitation are eligible for protective services.

The definition for incapacity includes adults 18 years of age or older with mental or physical impairments. Mental impairment includes those conditions that render the adult unable to recognize the consequences of his/her behavior, unable to identify his/her needs and take steps necessary to see that those needs are met, or unable to perceive relevant facts and reach a decision based on those facts. Mental impairments may include mental illness, mental retardation, emotional disturbance, developmental delays, and dementia.

Physical impairment includes conditions that render the adult unable to take care of basic needs such as personal hygiene, necessary shopping, bill paying, food preparation, or obtaining required medical care. This includes adults who are 18 years of age or older and who have some physical disability that renders them unable to take care of themselves and/or their affairs.

An adult may be considered incapacitated in one phase of his/her life while able to function adequately in other areas.

Adults who are involuntarily committed to facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) are incapacitated for the purposes of this chapter.

7.1.4. Identifiable Adult

The report is client-specific inasmuch as there is an identifiable, living adult who is alleged to need protective services. The reporter may not know the adult's name but must be able to provide enough information to enable the APS worker to locate the subject of the report.

7.1.5. Circumstances of Abuse, Neglect, and Exploitation

The circumstances described must allege suspected abuse, neglect or exploitation, or must allege that the adult is at risk of abuse, neglect or exploitation as those terms are defined in Section 4 of this chapter.

7.1.6. Agency of Jurisdiction

The department receiving the report must be an agency of jurisdiction. If the receiving department is not the agency of jurisdiction, the receiving department has a responsibility to refer the report to the appropriate department.

7.2. Place of Residence

WHERE THE SUBJECT OF THE INVESTIGATION RESIDES WHEN THE PLACE OF RESIDENCE IS KNOWN AND WHEN THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION OCCURRED IN THE CITY OR COUNTY OF RESIDENCE (22 VAC 40-740-21).

The adult subject of a report that alleges need for protective services may be an adult living in the community, in nursing facilities, assisted living facilities, adult foster care homes, acute-care hospitals, facilities and programs operated or licensed by DMHMRSAS or other facilities.

For the purposes of this Section, an adult who is placed in a nursing facility, assisted living facility, group home, or facility licensed or operated by DMHMRSAS is a resident of the locality in which the facility is located.

7.3. Outside of the Place of Residence

WHERE THE ABUSE, NEGLECT OR EXPLOITATION IS BELIEVED TO HAVE OCCURRED WHEN THE REPORT ALLEGES THAT THE INCIDENT OCCURRED OUTSIDE THE CITY OR COUNTY OF RESIDENCE (22 VAC 40-740-21).

7.4. Where Abuse, Neglect or Exploitation Was Discovered

WHERE THE ABUSE, NEGLECT OR EXPLOITATION WAS DISCOVERED IF THE INCIDENT DID NOT OCCUR IN THE CITY OR COUNTY OF RESIDENCE OR IF THE CITY OR COUNTY OF RESIDENCE IS UNKNOWN AND THE PLACE WHERE THE

ABUSE, NEGLECT OR EXPLOITATION OCCURRED IS UNKNOWN (22 VAC 40-740-21).

7.5. Nonresident in the Commonwealth

WHERE THE ABUSE, NEGLECT OR EXPLOITATION WAS DISCOVERED IF THE SUBJECT OF THE REPORT IS A NONRESIDENT WHO IS TEMPORARILY IN THE COMMONWEALTH (22 VAC 40-740-21).

7.5.1. When the Alleged Victim Is Incarcerated in a State Correctional Facility

LOCAL DEPARTMENTS SHALL NOT INVESTIGATE ALLEGATIONS OF ABUSE, NEGLECT OR EXPLOITATION OF ADULTS INCARCERATED IN STATE CORRECTIONAL FACILITIES (*Code of Virginia*, § 63.2-1605).

If the alleged victim is incarcerated in a State correctional facility, the reporter should be referred to the Virginia Department of Correction's State Ombudsman (telephone 1-804-674-3014).

8. VALIDITY

Any report that meets the criteria specified in Section 7 of this chapter is a valid report regardless of the referral source, the method by which the report is received, and without regard to the adult's income, assets, or living arrangement. Each report received must be reduced to writing within 72 hours by completing the appropriate screens in ASAPS (See ASAPS User Manual). A copy of the "Printable" format can be found in Appendix A.

8.1. When the Report Is Not Valid

If a report is determined to be not valid (i.e., does not meet criteria for a valid report), the local department should:

- 1) Inform the person who has reported, if the person's identity is known, of the reasons why the case is not being accepted for an APS investigation. The reporter should be informed that the case may be referred to another agency for administrative or criminal investigation if appropriate.
- 2) Document the receipt of the report in ASAPS following ASAPS procedures (See ASAPS User's Manual)
- 3) When appropriate, contact the subject of the APS report to offer adult services, provide consultation, or/and make direct referrals for other services.
- 4) Refer the situation being reported to other entities as appropriate (e.g., local law enforcement, State or local Ombudsman, other state agencies for possible administrative actions) The "Notifications" under APS tab in ASAPS provides the

means of documenting these referrals (See ASAPs User's Manual). A copy of the referral can be found in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES."

- 5) A report of abuse, neglect or exploitation of an adult who has died is not an appropriate situation for an APS investigation. The purpose of an APS investigation is to determine whether the living adult is in need of protective services and what services are needed. However, if it is alleged that the adult died as a result of abuse, neglect or exploitation, report the alleged situation to law-enforcement authorities, the medical examiner, and/or the appropriate regulatory agencies.
- 6) Refer adults to the local domestic violence agency when the reports alleged domestic violence. When alleged domestic violence reports meet criteria for an APS investigation, an APS report should be taken and an investigation initiated.
- 7) Refer endangering situations to regulatory authorities where appropriate (See Investigation in Long-Term Care Facilities, Acute Care Facilities, and Other Group Care Facilities, Sections 25 through 36 of this chapter). If an adult, believed to have been abused, neglected or exploited while a resident in a licensed facility, is no longer in that facility when the report is received, regulatory authorities should be notified that a report was received and no protective services investigation will be conducted. The "Notifications" under APS tab in ASAPs provides the means of documenting these referrals (See ASAPs User Manual). A copy of the referral can be found in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES."
- 8) If the adult alleged to have been abused, neglected or exploited has been permanently relocated and is no longer at risk at the time the report is received, the report will be considered invalid, and no investigation will be conducted. The "Notifications" under APS tab in ASAPs provides the means of documenting the notification/letter to the reporter (See ASAPs User Manual). A copy of the letter can be found in Appendix C-1, "Sample Letter to Mandated Reporter (When the Report Is Not Valid)"
- 9) If a facility staff person who is alleged to be the perpetrator of abuse, neglect or exploitation of an adult patient/resident has been permanently terminated as an employee of the facility at the time the report is received, the investigation will not be conducted. However, the situation should be reported to other entities as appropriate. The "Notifications" under APS tab in ASAPs provides the means of documenting these referrals (See ASAPs User Manual). A copy of the referral can be found in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES."
- 10) If a facility staff person who is alleged to be the perpetrator of abuse, neglect or exploitation has been suspended, the investigation will be conducted.

- 11) If a facility staff person who is alleged to be the perpetrator of abuse, neglect or exploitation has been reassigned within the facility, the investigation will be conducted.
- 12) If the person alleged to be the perpetrator of abuse, neglect or exploitation is another patient/resident who has been permanently separated from the alleged victim, and the separation is such as to assure that no further abuse, neglect or exploitation will occur, no investigation will be conducted. In situations alleging resident-to-resident abuse, see guidelines at Section 25.2 of this chapter.

9. Documenting the APS Report in ASAPS

ASAPS is the official system to document the receipt and investigation of valid APS Reports. Prior to entering APS report information, the worker should conduct an ASAPS external search to determine if the adult is known to ASAPS.

9.1 When There Is No Service Case in ASAPS

From the My Caseload screen, the worker should select “New APS Case.”

9.1.1 APS Report Screen in ASAPS

Complete the APS Report Screen (See ASAPS User’s Manual).

9.1.2 Case Info Screen in ASAPS

Complete the Case Info Screen (See ASAPS User’s Manual).

9.2 When There Is A Closed Service Case in ASAPS

“Open close case” in ASAPS (See User’s Manual).

9.2.1 Case Info Screen in ASAPS

The Case Info screen should be up-dated as needed. Information concerning the client’s income and financial resources should be entered if known. “APS Investigation” should be selected as the case type if the investigation has not been completed (See the ASAPS User’s Manual).

9.2.2 APS Report Screen in ASAPS

Under the APS Tab, select “New APS Report”. The Report screen must be completed (See the ASAPS User’s Manual).

9.3 When There Is an Open Service Case in ASAPS

When the case is already an open service case in ASAPS, access the case.

9.3.1 APS Report Screen in ASAPS

Under the APS Tab, select “New APS Report”. The Report screen must be completed (See the ASAPS User’s Manual).

9.3.2 Case Info Screen in ASAPS

The case type should not be changed until the investigation is completed. If the disposition is "Needs Protective Services and Accepts," change the case type to the appropriate APS case type.

9.4 Invalid Reports

Invalid reports may be documented in ASAPS. Local departments are encouraged to document invalid reports to improve the efficiency of managing invalid reports and to provide accurate credit for the worker's time spent in obtaining the information, evaluating the validity of the report and making appropriate referrals. Follow the procedures above, depending on whether the report occurred in a New, Closed or Open case.

10. TIME FRAME FOR INITIATING AN ADULT PROTECTIVE SERVICES INVESTIGATION

UPON RECEIPT OF THE REPORT PURSUANT TO § 63.2-1606, THE LOCAL DEPARTMENT SHALL DETERMINE THE VALIDITY OF SUCH REPORT AND SHALL INITIATE AN INVESTIGATION WITHIN 24 HOURS OF THE TIME THE REPORT IS RECEIVED IN THE LOCAL DEPARTMENT (*Code of Virginia*, § 63.2-1605).

To initiate the investigation, the social worker must gather enough information concerning the report to determine if an immediate response is needed to ensure the safety of the alleged victim. Pertinent information can be obtained from the report, case record reviews, contact with the alleged victim, the reporter, friends, neighbors, and service providers.

WHEN DETERMINING THE NEED FOR AN IMMEDIATE RESPONSE, THE SOCIAL WORKER SHOULD CONSIDER THE FOLLOWING FACTORS:

- 1) THE IMMINENT DANGER TO THE ADULT;
- 2) THE SEVERITY OF THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION;
- 3) THE CIRCUMSTANCES SURROUNDING THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION; AND
- 4) THE PHYSICAL AND MENTAL CONDITION OF THE ADULT.

A FACE-TO-FACE CONTACT WITH THE ALLEGED VICTIM SHALL BE MADE AS SOON AS POSSIBLE BUT NOT LATER THAN FIVE CALENDAR DAYS AFTER THE INITIATION OF THE INVESTIGATION UNLESS THERE ARE VALID REASONS THAT THE CONTACT COULD NOT BE MADE. THOSE REASONS SHALL BE DOCUMENTED IN THE ADULT PROTECTIVE SERVICES ASSESSMENT NARRATIVE (22 VAC 40-740-21).

11. HOTLINE REPORTS

For APS reports received through the APS hotline, the date/time the report was received by the local department is the timeframe to use to initiate the investigation.

12. PREPARING FOR THE INVESTIGATION

Conduct an ASAPS search to identify all department records pertaining to the adult. Review all appropriate department records including records that are not in ASAPS.

Review the need to request access to any records, reports, or other information maintained by any mandated reporter (*Code of Virginia*, § 63.2-1606).

If the report alleges sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm, report the matter immediately to the local law enforcement agency. Consider whether the cooperation of law-enforcement and/or other State and local departments, agencies, authorities, and institutions will be needed as required under *Code of Virginia*, § 63.2-1606(K). If the need for such cooperation is indicated, initiate contact with the appropriate persons.

12.1. Coordinating With Other Investigators

The local department has primary responsibility for investigating all reports of suspected adult abuse, neglect or exploitation in all settings except state correctional facilities. This responsibility shall not be delegated. However, investigations may be conducted cooperatively with such authorities. The APS worker should take the following actions for coordinating investigations:

Notify the local law-enforcement agency when a report alleges sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm.

THE LOCAL DEPARTMENT SHALL REFER ANY APPROPRIATE MATTER AND ALL RELEVANT DOCUMENTATION TO THE APPROPRIATE LICENSING, REGULATORY, OR LEGAL AUTHORITY FOR ADMINISTRATIVE ACTION OR CRIMINAL INVESTIGATION (*Code of Virginia*, § 63.2-1605).

Determine the need to include other investigators as participants in planning for how the investigation will be conducted. Joint investigations are encouraged in situations where law-enforcement, regulatory authorities, or other service agencies have a legitimate interest in investigating and resolving the issue that is the basis for the report. The referral form in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES", shall be used to notify the appropriate agencies.

Immediately contact potential co-investigators to notify them of the receipt of the report and determine whether a joint investigation will be conducted.

Proceed with the investigation within 24 hours even if other persons who may appropriately be included as participants in the investigation are not available to proceed promptly with the investigation.

Determine who will be interviewed and in what order. In most situations, the APS worker should contact the adult first, as he/she is usually the primary source of information.

Decide whether to notify the adult and/or any legally appointed guardian or conservator before the home visit. While advance notification may be desirable, circumstances may warrant unannounced visits.

12.2. Where the Investigation Extends across City or County Lines

WHEN AN INVESTIGATION EXTENDS ACROSS CITY OR COUNTY LINES, LOCAL DEPARTMENTS IN THOSE CITIES OR COUNTIES SHALL ASSIST WITH THE INVESTIGATION AT THE REQUEST OF THE LOCAL DEPARTMENT WITH PRIMARY RESPONSIBILITY (22 VAC 40-740-21).

12.3. Conflict of Interest

Some situations may be expected to present a conflict of interest for a department fulfilling its responsibility to investigate and/or provide protective services. The local department should contact a neighboring county or city department of social services for assistance in investigating the report and/or delivering protective services, if the conflict of interest extends to service delivery. The local department, requesting assistance, retains financial responsibility for the purchase of services needed during the investigation and/or the delivery of services. The local department may contact the appropriate Adult Services Specialist for consultation and assistance in assigning investigatory and/or service delivery responsibility to another local department of social services.

Examples of such situations include reports of suspected abuse, neglect or exploitation that:

- 1) Implicate an employee or relative/spouse of an employee of the local department;
- 2) Implicate a member of the local board or relative/spouse of a member of the local board;
- 3) Implicate other local governmental entities;
- 4) Implicate the provider of a service who has been certified or approved by the local department (e.g., companion services); or
- 5) Present other situations in which the department or department staff may feel compromised or pressured.

13. CONDUCTING THE INVESTIGATION

The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify what services are needed to provide the protection.

The need for protective services may be based on the circumstances of abuse, neglect or exploitation identified in the report, or it may be based on the circumstances of abuse, neglect or exploitation the APS worker identifies during the investigation, or both.

13.1. Legislative Authority

Local agencies are given authority by the *Code of Virginia*, § 63.2-1605 to initiate and facilitate investigations of suspected abuse, neglect or exploitation. The Courts have the power to enforce statutory authority.

Local departments have the authority and responsibility to

- 1) Determine an adult's need for protective services;
- 2) Identify the specific services needed; and
- 3) Provide or arrange for the provision of protective services
(*Code of Virginia*, § 63.2-1605 and 22 VAC 40-740-60).

13.1.1. Authority to Conduct Investigations

UPON RECEIPT OF THE REPORT PURSUANT TO § 63.2-1606, THE LOCAL DEPARTMENT SHALL DETERMINE THE VALIDITY OF SUCH REPORT AND SHALL INITIATE AN INVESTIGATION WITHIN 24 HOURS OF THE TIME THE REPORT IS RECEIVED IN THE LOCAL DEPARTMENT (*Code of Virginia*, § 63.2-1605).

13.1.2. Authority to Gain Access

The investigation shall include a visit to the adult alleged to be abused, neglected, or exploited or at risk of abuse, neglect or exploitation.

If the department is refused access to the alleged victim to conduct the investigation, it is incumbent upon the department to attempt to complete the investigation to determine the need for protective services, to assess whether the adult "has capacity to consent" to receive protective services, and to determine whether the adult requests or agrees to receive services.

13.1.3. Access to Investigate

THE LOCAL DEPARTMENT OF SOCIAL SERVICES SHALL CONDUCT A THOROUGH INVESTIGATION OF THE REPORT (22 VAC 40-740-21).

13.2. Consultation with Others

THE INVESTIGATION SHALL INCLUDE CONSULTATION WITH OTHERS HAVING KNOWLEDGE OF THE FACTS OF THE PARTICULAR CASE (22 VAC 40-740-21). Virginia law and regulations authorize that information may be disclosed to persons having legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104

and pursuant to official interagency agreements or memoranda of understanding between state agencies (*Code of Virginia*, § 63.2-1605 and 22 VAC 40-740-50).

The *Code of Virginia* also requires that ALL PERSONS REQUIRED TO REPORT SUSPECTED ADULT ABUSE, NEGLECT OR EXPLOITATION SHALL COOPERATE WITH THE INVESTIGATING ADULT PROTECTIVE SERVICES WORKER OF A LOCAL DEPARTMENT AND SHALL MAKE INFORMATION, RECORDS AND REPORTS WHICH ARE RELEVANT TO THE INVESTIGATION AVAILABLE TO SUCH WORKER TO THE EXTENT PERMITTED BY STATE AND FEDERAL LAW (*Code of Virginia*, § 63.2-1606).

13.3. Judicial Authority

Without permission or Court authorization, an APS worker cannot enter or remain in the home. If the department is denied access to the adult, the APS worker should advise that he/she is required to investigate the report and may need to seek Court authorization to gain entry to conduct the investigation. The reason for the inability to complete the visit should be documented in the APS assessment narrative in ASAPS.

13.4. Order for Access and/or Entry

IF A LOCAL DEPARTMENT IS DENIED ACCESS TO AN ADULT FOR WHOM THERE IS REASON TO SUSPECT THE NEED FOR ADULT PROTECTIVE SERVICES, THEN THE LOCAL DEPARTMENT MAY PETITION THE CIRCUIT COURT FOR AN ORDER ALLOWING ACCESS OR ENTRY OR BOTH. UPON A SHOWING OF GOOD CAUSE SUPPORTED BY AN AFFIDAVIT OR TESTIMONY IN PERSON, THE COURT MAY ENTER AN ORDER PERMITTING SUCH ACCESS OR ENTRY (*Code of Virginia*, § 63.2-1605).

13.5. Required Visit and Private Interview

THE INVESTIGATION SHALL INCLUDE A VISIT AND PRIVATE INTERVIEW WITH THE ADULT ALLEGED TO BE ABUSED, NEGLECTED OR EXPLOITED (22 VAC 40-740-21).

A visit with the adult alleged to be the victim of abuse, neglect or exploitation or alleged to be at risk of abuse, neglect or exploitation is required. A private interview with the alleged victim is essential. In most situations, the adult alleged to be the victim should be interviewed at the beginning of the investigation, as he/she is usually a primary source of information.

There may be occasions in which the adult requests the presence of another person in the interview. A determination must be made on a case-by-case basis as to whether the request should be honored or whether the request is the result of coercion or intimidation. If the private interview is not conducted, the reason for not conducting the interview should be documented in the APS assessment narrative in ASAPS.

13.6. When the Required Visit and Private Interview Cannot Be Completed

There may be times when the required visit and private interview with the adult may need to be discontinued because the adult is uncooperative or violent. The APS worker should take any necessary precautions to protect himself/herself.

In some situations, the adult and/or homeowner may refuse to permit an APS worker to enter the home. In other situations, an APS worker may be asked to leave before the interview is completed. In either situation, the APS worker must respect the homeowner and/or adult's decision.

If the adult's capacity to consent is in question, the investigation should continue using other sources of information in order to reach a determination about the adult's capacity to consent.

13.7. Separate Interviews with Alleged Victim and Alleged Perpetrator

The alleged perpetrator and the alleged victim should be interviewed separately.

13.8. Taking and Using Photographs, Video or Audio Recordings or Appropriate Medical Imaging of an Adult

IN ANY CASE OF SUSPECTED ADULT ABUSE, NEGLECT OR EXPLOITATION, LOCAL DEPARTMENTS, WITH THE INFORMED CONSENT OF THE ADULT OR HIS LEGAL REPRESENTATIVE, MAY TAKE OR CAUSE TO BE TAKEN PHOTOGRAPHS, VIDEO RECORDINGS, OR APPROPRIATE MEDICAL IMAGING OF THE ADULT AND HIS ENVIRONMENT AS LONG AS SUCH MEASURES ARE RELEVANT TO THE INVESTIGATION AND DO NOT CONFLICT WITH §18.2-386.1 (*Code of Virginia*, § 63.2-1605(E)).

In cases of suspected adult abuse, neglect or exploitation, photographs of the adult that are taken or that are made available for the purposes of the investigation may be used only with the verbal and/or written consent of the adult or a legally appointed guardian or conservator, an attorney-in-fact named by a power-of-attorney, a person authorized to consent to medical treatment under the *Code of Virginia*, § 54.1-2986, or with a Court order. Written consent is recommended and should be filed in the case record.

13.9. The Alleged Perpetrator

13.9.1. Identity of Perpetrators

Perpetrators of adult abuse, neglect or exploitation may be family members, friends, caregivers, service providers, neighbors, or any other person whose treatment of an adult conforms to the definition of terms found in Section 4 of this chapter. *The identity of the alleged perpetrator(s) is not required to initiate an investigation.*

13.9.2. Timing of Interview with the Alleged Perpetrator

A private interview with the alleged perpetrator should be as late in the investigation as possible so that the APS worker has maximum information about the facts and has assembled all available documentation. An exception should be made if delay will intensify the risk to the alleged victim named in the report or will result in lost opportunity to interview the alleged perpetrator or is likely to negatively affect the interview in other ways.

13.9.3. Setting for the Interview with Alleged Perpetrator

The private interview with the alleged perpetrator should occur in the setting that offers the best opportunity to elicit the cooperation of the alleged perpetrator and information pertinent to the investigation. If the alleged perpetrator is alleged to be violent, this should be considered in selecting a setting for the interview. Law enforcement should be contacted and requested to accompany the APS worker if there is a concern about the APS worker's safety.

13.9.4. Interview with the Alleged Perpetrator Who Is a Minor

When the alleged perpetrator is a minor, written permission to interview must be obtained from a parent or a legal guardian before the private interview. Without permission, the minor may not be interviewed. The APS worker should document the reason for not interviewing the minor and should complete the investigation without the interview.

The APS worker should determine what services may need to be provided to the alleged juvenile perpetrator as well as to the responsible parent or guardian or should make an appropriate referral for the determination of service needs. Such services should be offered and arranged.

13.9.5. The Interview with the Alleged Perpetrator Is Not Completed

There may be times when an interview with the alleged perpetrator is not practical or is not in the best interest of the alleged victim. There may be times when the interview may need to be discontinued (e.g., the APS worker feels his/her safety or the safety of the alleged victim is in jeopardy). The APS worker must always give priority to the safety of the alleged victim and to his/her own safety.

If the private interview is not completed, the reason for not conducting the interview should be documented in the APS assessment narrative in ASAPS.

13.10. Consultation with Collaterals

THE INVESTIGATION SHALL INCLUDE CONSULTATION WITH OTHERS HAVING KNOWLEDGE OF THE FACTS OF THE PARTICULAR CASE (22 VAC 40-740-21).

The investigation shall include information gathered from relatives and friends when appropriate. Background information about the adult may be significant to determine whether the current situation represents a change of behavior or level of functioning.

When needed to clarify the adult's medical and/or psychiatric history, the investigation should include information gathered from physicians and/or other health professionals to whom the adult is known.

Contact with other agencies and persons may be needed in order to gather additional information for assessing the adult's needs.

13.11. Requirement to Release Information by Mandated Reporters

All persons mandated to report and identified in the *Code of Virginia*, § 63.2-1606 must disclose all information that is the basis for the suspicion of abuse, neglect or exploitation of the adult and, upon request, make available to the APS worker investigating the report any information, records or reports that document the basis for their suspicion of abuse, neglect or exploitation.

The requirement to make pertinent information, records or reports available is without regard to who made the protective services report (i.e., any mandated reporter must make pertinent information, records or reports available to the APS worker investigating the report whether he/she or some other person made the protective services report).

13.12. Authority to Access Information and Records Regarding Action Taken by Attorneys-In-Fact or Other Agents

THE AGENT STANDS IN FIDUCIARY RELATIONSHIP TO THE PRINCIPAL BY WHOM HE WAS APPOINTED AND MAY BE HELD LIABLE FOR A BREACH OF ANY FIDUCIARY DUTY TO THE PRINCIPAL (*CODE OF VIRGINIA* § 11-9.1).

The APS unit of the local department of social services is designated by the *Code of Virginia*, § 37.2-1018, as having an interest in the welfare of persons believed to be unable to attend to their affairs. (See definition of "Person Interested in the Welfare of a Principal" in Section 4 of this chapter.)

As an interested person, the APS worker who is conducting an APS investigation or providing protective services and who needs information and/or records pertaining to actions taken within the past five years by the attorney-in-fact, guardian, conservator, or other agent, should request the needed information and/or records from the attorney-in-fact, guardian, conservator, or other agent citing the *Code of Virginia*, § 37.2-1018.

If the attorney-in-fact, guardian, conservator, or other agent fails to comply with the request for information and/or records, a petition for discovery of information and records pertaining to actions taken within the past five years from the date of request may be filed in Circuit Court.

IF AN AGENT IS REMOVED BY THE COURT BECAUSE OF ABUSE, NEGLECT, OREXPLOITATION OF THE PRINICPAL, ALL FEES AND COSTS ASSOCIATED WITH THE REMOVAL PROCEEDING, INCLUDING THE ATTORNEY'S FEE OF THE PREVAILING PARTY, SHALL BE BORNE BY THE AGENCT (CODE OF VIRGINIA § 11-9.1).

13.13. Requests to Include Other Individuals in Interviews with Collaterals

When a collateral requests the presence of another person in the interview, a determination must be made on a case-by-case basis to determine if the request appears legitimate and is not the result of coercion or intimidation. If the other person is not included in the interview, the collateral may choose not to be interviewed. If the request to have another person present appears to be the result of coercion or intimidation and the collateral does not agree to be interviewed alone, the department may choose not to conduct the interview. The reason for not conducting the interview should be documented in the APS assessment narrative in ASAPS.

13.14. Collaterals in Facilities

In a facility investigation, the APS worker should inform the collateral and others present that it is a violation of *Code of Virginia*, § 32.1-138.4 (Nursing Facility), *Code of Virginia*, § 63.2-1731 (Assisted Living Facility) and *Code of Virginia*, §32.1-125.4 (Hospital) to retaliate or discriminate against any person who in good faith provides information to or otherwise cooperates with the department.

The APS worker may schedule an interview with the collateral at another time and location and setting that would promote greater cooperation from the collateral.

14. APS ASSESSMENT

THE PURPOSE OF THE INVESTIGATION IS TO DETERMINE WHETHER THE ADULT ALLEGED TO BE ABUSED, NEGLECTED OR EXPLOITED OR AT RISK OF ABUSE, NEGLECT OR EXPLOITATION IS IN NEED OF PROTECTIVE SERVICES AND, IF SO, TO IDENTIFY SERVICES NEEDED TO PROVIDE THE PROTECTION (22 VAC 40-740-21).

Accurate assessment of all of the adult's abilities and needs is crucial to making the disposition and determining the services needed to alleviate the abuse, neglect or exploitation.

Assessment is an ongoing process. The assessment is based on the APS worker's observations, interviews with the alleged victim and the alleged perpetrator, and information obtained from collateral contacts.

14.1. Components of the Assessment

The two components of the APS assessment are:

- 1) The APS assessment narrative (found in the Investigation screen under the APS Tab in ASAPS), and
- 2) The assessment of the adult's circumstances presented in sub-headed titles.

14.1.1. The APS Assessment Narrative

AN ASSESSMENT NARRATIVE SHALL BE REQUIRED FOR ALL PROTECTIVE SERVICES INVESTIGATIONS AND SHALL BE TITLED ADULT PROTECTIVE SERVICES ASSESSMENT NARRATIVE (22 VAC 40-740-40).

The narrative must address the following:

- 1) THE ALLEGATIONS IN THE REPORT OR CIRCUMSTANCES DISCOVERED DURING THE INVESTIGATION THAT MEET POLICY DEFINITIONS OF ABUSE, NEGLECT OR EXPLOITATION as defined in Section 4 of this chapter. (See Appendix T, "Indicators of Abuse, Neglect, and Exploitation.")
- 2) THE EXTENT TO WHICH THE ADULT IS PHYSICALLY, EMOTIONALLY, AND MENTALLY CAPABLE OF MAKING AND CARRYING OUT DECISIONS CONCERNING HIS HEALTH AND WELL-BEING.
- 3) RISK OF SERIOUS HARM TO THE ADULT.
- 4) NEED FOR AN IMMEDIATE RESPONSE BY THE ADULT PROTECTIVE SERVICES WORKER UPON RECEIPT OF A VALID REPORT.
- 5) THE ABILITY TO CONDUCT A PRIVATE INTERVIEW WITH THE ALLEGED VICTIM, ALLEGED PERPETRATOR (IF KNOWN) AND ANY COLLATERAL CONTACTS HAVING KNOWLEDGE OF THE CASE (22 VAC 40-740-40)
- 6) If appropriate, the inability to complete the investigation within the required time frames, and the plan to complete the investigation.
- 7) Evidence that supports the disposition. The basis for the disposition shall be documented under "Investigative Findings" in the Investigation section under the APS Tab in ASAPS (See ASAPS User's Manual).

The APS assessment narrative may include confidential APS information and any additional information specific to APS.

14.1.2. The Assessment of the Adult's Circumstances Presented in Sub-headed Titles

The following areas must be assessed for each alleged victim as part of the APS investigation: Environment, Functional Ability, Physical/Health, Mental Health/Psychosocial, Support System and Income and Resources.

The information within each sub-headed assessment area should document the major facts used by the APS worker to substantiate the APS worker's disposition and be summarized in the "Investigative Findings" section

When printing the UAI from ASAPS, the APS worker should omit the name of the reporter and any other information that is confidential and not subject to the Virginia Freedom of Information Act

The following areas must be assessed in the sub-headed title sections in the Assessment in ASAPS:

14.1.2.1. Environment

Assess the daily living environment to make a judgment whether this contributes to the adult's endangerment. This should include consideration as to whether the dwelling is structurally sound, the adult is mobile to the extent that he/she can exit the building; the living quarters are adequately heated or cooled; toilet facilities are available and in working condition; there is refrigeration and other adequate storage for food; there is ready availability of a telephone to summon help; there is no animal, rodent, or insect infestation; utilities are working; and there are no other endangering housing deficiencies.

The assessment of the physical environment should include identification of type and feasibility of needed improvements or changes to the adult's environment, and whether the adult is isolated in his/her environment.

14.1.2.2. Functional Ability

There is a direct relationship between an adult's risk of being abused, neglected or exploited and his/her dependence on others for performance of activities of daily living (ADLs). An assessment of the adult's ability to manage these daily living activities is one consideration in assessing his/her need for protective services. The adult's ability to handle tasks such as bathing, dressing, toileting, transferring, and eating should be evaluated.

Other activities to be considered are the instrumental activities of daily living (IADLs) that include the ability to use the telephone, shop for essential supplies, prepare food, perform housekeeping and laundry

tasks, travel independently, assume responsibility for medication, and manage his/her own finances.

Physical examination and other reports from physicians and other health care professionals should be requested when needed to facilitate a determination of the adult's functional abilities and need for protective services.

14.1.2.3. Physical Health

The assessment of the adult's physical health may be based on reports of illness, disabilities, and symptoms by the adult or by friends, relatives, or other contacts, or by the APS worker's observation of apparent medical problems. Additional areas to consider when assessing physical health include:

- 1) The adult's current medical condition, including any diagnosis or prognosis available, and any services being used;
- 2) Symptoms observed by the APS worker or reported by the adult or other observers that may not have been diagnosed or treated;
- 3) The number and types of medication(s) the adult is currently taking (prescription and non-prescription) and whether medication is being prescribed by multiple physicians;
- 4) Diet and eating habits (nutrition and hydration); and
- 5) The adult's need for assistive devices (eyeglasses, hearing aids, dentures, and mobility aids to compensate for physical impairments, etc.).

14.1.2.4. Mental Health/Psychosocial

While an APS worker's assessment of an adult's psychological functioning cannot take the place of a formal clinical evaluation, it can suggest that a psychiatric problem is present and is contributing to the adult's endangerment. This assessment can provide the APS worker with reason for recommending a more complete assessment by mental health professionals. Additional areas to consider when assessing psychosocial status include:

- 1) The adult's general appearance is appropriate and consistent with age, social, and economic status. This includes, but is not limited to, an evaluation of appropriateness of dress and personal hygiene;
- 2) The adult's perceived emotional or behavioral problem(s);
- 3) Adult's orientation to person, place and time as well as memory and judgment capacity;
- 4) Any manifestations of emotional or behavioral problems (e.g., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, perceptions, delusions, hallucinations, etc.);

- 5) Any major life changes/crises in the past year (e.g., death of a significant person, loss of income, a move, an illness, divorce, institutional placement, etc.);
- 6) Ability to follow simple instructions, ability to manage financial affairs, appropriate responses to questions;
- 7) Self-endangering behavior of the adult (e.g., suicidal behavior, refusal of medical treatment, gross self-neglect, wandering, aggressive acts that are likely to precipitate retaliation, etc.); and
- 8) The APS worker's evaluation regarding the adult's ability to make responsible, rational, and informed decisions as well as the ability to understand the probable consequences of his/her decisions.

14.1.2.4.A. Guidelines for Determining Capacity to Consent

Mental illness, mental retardation, physical illness, dementia, disability, alcoholism, drug addiction, and other conditions may be reasons why an adult is unable to make, communicate or carry out responsible decisions concerning his/her well-being.

A review of the following abilities will help the APS worker differentiate between those who are and those who are not able to make, communicate or carry out responsible decisions concerning his/her well-being.

14.1.2.4.B. Ability to Communicate a Choice

Assess the adult's ability to make and communicate a choice from the realistic choices available. Assess the adult's ability to maintain the choice made until it can be implemented.

14.1.2.4.C. Ability to Understand Relevant Information

Assess the adult's ability to understand information that is relevant to the choice that is to be made (i.e., gangrene will likely end in death without treatment).

14.1.2.4.D. Ability to Compare Risks and Benefits of Available Options

Assess the adult's ability to compare risks and benefits of available options. This requires weighing risks and benefits of a single option and weighing more than one option at the same time. Can the adult give a logical explanation for the decision he/she reached in terms of its risks and benefits?

14.1.2.4.E. Ability to Comprehend and Appreciate the Situation

Assess the adult's ability to comprehend and appreciate the situation. An adult may be able to understand relevant information (i.e., gangrene will likely end in death without treatment) and yet be unable to appreciate his/her own situation (i.e., believes his/her own gangrenous foot will not cause his/her death or disregards medical opinion and denies that the foot is gangrenous). An adult who comprehends and appreciates the situation will acknowledge illness when it is shown to be present and acknowledge the risks and benefits of available treatment options for himself/herself.

14.1.2.5. Support System

To assess the adult's support system, the APS worker must first identify those family, friends, neighbors, religious and other voluntary groups, and any formal supports that comprise the adult's social network. To assess the support of these persons or groups, it may be helpful to answer the following questions:

- 1) Does the adult have family, friends, neighbors, and organizations available to assist him/her?
- 2) Are these persons and organizations able to provide effective and reliable assistance?
- 3) What is the frequency and quality of assistance available to the adult from informal and formal support systems?

14.1.2.6 Income and Resources

Assess the adult's knowledge of his income and resources and his ability to manage his financial affairs. Dementia, disorientation and short-term memory loss leaves the adult vulnerable to financial exploitation by others or can lead to self-neglecting circumstances such as utility cut-offs or the inability to purchase needed medication. If the adult is unable to discuss his income and financial management ability, the APS worker should contact family members, supportive friends, substitute decision makers or financial institutions who have knowledge of the adult's income and resources. Obtaining this information will not only address the issue of exploitation but also be useful for service planning and assistance with benefit program eligibility determinations.

14.1.3. Completion of the Investigation

The investigation shall be completed not later than 45 days from the date the report was received. Any delay in completing the investigation within the 45-day

period shall be documented in the APS assessment narrative in ASAPS. The narrative should specify a plan for completing the investigation.

15. DECISION-MAKING, DISPOSITION, AND APPLICATION

15.1. Decision Making

AFTER INVESTIGATING THE REPORT, THE ADULT PROTECTIVE SERVICES WORKER MUST REVIEW AND EVALUATE THE FACTS COLLECTED AND MAKE A DISPOSITION AS TO WHETHER THE ADULT IS IN NEED OF PROTECTIVE SERVICES AND, IF SO, WHAT SERVICES ARE NEEDED (22 VAC 40-740-40).

15.2. Eligible Adults

The need for protective services may be based on the adult's age, impaired health, or disability.

"ADULT" MEANS ANY PERSON 60 YEARS OF AGE OR OLDER, OR ANY PERSON 18 YEARS OF AGE OR OLDER WHO IS INCAPACITATED AND WHO RESIDES IN THE COMMONWEALTH; PROVIDED, HOWEVER, "ADULT" MAY INCLUDE QUALIFYING NONRESIDENTS WHO ARE TEMPORARILY IN THE COMMONWEALTH AND WHO ARE IN NEED OF TEMPORARY OR EMERGENCY PROTECTIVE SERVICES (*Code of Virginia*, § 63.2-1603).

AN "INCAPACITATED PERSON" MEANS ANY ADULT WHO IS IMPAIRED BY REASON OF MENTAL ILLNESS, MENTAL RETARDATION, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE OR OTHER CAUSES TO THE EXTENT THAT THE ADULT LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE, COMMUNICATE OR CARRY OUT RESPONSIBLE DECISIONS CONCERNING HIS OR HER WELL-BEING (*Code of Virginia*, § 63.2-1603).

Adults 60 years of age or older are eligible for protective services without other qualifying conditions. An adult may be considered incapacitated in one phase of his/her life while able to function adequately in other areas.

15.3. Dispositions

15.3.1. Time Frame for Making Disposition

THE INVESTIGATION SHALL BE COMPLETED AND A DISPOSITION ASSIGNED BY THE LOCAL DEPARTMENT WITHIN 45 DAYS OF THE DATE THE REPORT WAS RECEIVED. IF THE INVESTIGATION IS NOT COMPLETED WITHIN 45 DAYS, THE RECORD SHALL DOCUMENT REASONS (22 VAC 40-740-40).

Evidence supporting the disposition shall be documented in the APS Assessment Narrative in ASAPS at the time the disposition is made.

Based on the investigative findings, the APS worker can reach one of four dispositions of the report.

15.3.2. “Needs Protective Services and Accepts”

THIS DISPOSITION SHALL BE USED WHEN:

A REVIEW OF THE FACTS SHOWS A PREPONDERANCE OF EVIDENCE THAT ADULT ABUSE, NEGLECT, AND/OR EXPLOITATION HAS OCCURRED OR IS OCCURRING;

A REVIEW OF THE FACTS SHOWS A PREPONDERANCE OF EVIDENCE THAT THE ADULT IS AT RISK OF ABUSE, NEGLECT OR EXPLOITATION AND NEEDS PROTECTIVE SERVICES IN ORDER TO REDUCE THAT RISK;

THE ADULT CONSENTS TO RECEIVE SERVICES PURSUANT TO §63.2-1610 OF THE *CODE OF VIRGINIA*; OR

INVOLUNTARY SERVICES ARE ORDERED BY THE COURT PURSUANT TO §63.2-1609 OR ARTICLE 1.1 (§37.2-1000) OF CHAPTER 4 OF TITLE 37.2 OF THE *CODE OF VIRGINIA* (22 VAC 40-740-40).

The disposition that the adult needs protective services is based on a preponderance of evidence that abuse, neglect or exploitation has occurred or it is based on reason to suspect that the adult is at risk of abuse, neglect or exploitation and needs protective services in order to reduce the risk.

A finding that an adult is in need of protective services is based on the substantiation of information reported or it is based on circumstances discovered during the investigation or both.

15.3.2.1. When the Adult Has the Capacity to Consent to Receive Services

THE LOCAL DEPARTMENT SHALL PROVIDE OR ARRANGE FOR PROTECTIVE SERVICES IF THE ADULT REQUESTS OR AFFIRMATIVELY CONSENTS TO RECEIVE THESE SERVICES (*Code of Virginia*, § 63.2-1610).

If the adult needs protective services and agrees to accept services, a service application will be completed. The case type should be changed to Adult Protective Services. A service plan will be developed and service delivery initiated.

If the adult needs protective services and refuses to accept specific services(s) offered (e.g., nursing facility placement), but will accept other

protective services (e.g., home-based services), a service application will be completed, a service plan will be developed, and service delivery initiated. The appropriate disposition is “needs protective services and accepts.”

15.3.2.2. When the Adult’s Capacity to Consent to Receive Services Is Questionable

When the adult’s capacity to consent to receive services is questionable, an evaluation must be made to determine if the adult has sufficient understanding and/or capability to make, communicate or carry out responsible decisions concerning his/her well-being.

If the adult needs protective services and lacks the capacity to consent, the services may be ordered by the Circuit Court on an involuntary basis (See Sections 19 and 21 of this chapter).

When services are ordered by the Circuit Court, the appropriate disposition is “needs protective services and accepts.” The case type should be changed to Adult Protective Services. A department-initiated application will be completed, a service plan developed, and service delivery initiated.

15.3.3. “Needs Protective Services and Refuses”

THIS DISPOSITION SHALL BE USED WHEN:

A REVIEW OF THE FACTS SHOWS A PREPONDERANCE OF EVIDENCE THAT ADULT ABUSE, NEGLECT OR EXPLOITATION HAS OCCURRED OR IS OCCURRING OR THE ADULT IS AT RISK OF ABUSE, NEGLECT OR EXPLOITATION; AND

THE REQUIREMENT TO PROVIDE SUCH SERVICES SHALL NOT LIMIT THE RIGHT OF ANY INDIVIDUAL TO REFUSE TO ACCEPT ANY OF THE SERVICES SO OFFERED, EXCEPT AS PROVIDED IN § 63.2-1608 (*Code of Virginia*, § 63.2-1605).

IF THE ADULT WITHDRAWS OR REFUSES CONSENT, THE SERVICES SHALL NOT BE PROVIDED (*Code of Virginia*, § 63.2-1610).

If an adult needs protective services and has capacity to make decisions for himself/herself, he/she may accept or refuse the services needed. If the capable adult refuses to accept all of the services offered, the case will be closed or appropriate referrals made.

15.3.4. "Need for Protective Services No Longer Exists"

THIS DISPOSITION SHALL BE USED WHEN:

A REVIEW OF THE FACTS SHOWS A PREPONDERANCE OF EVIDENCE THAT ADULT ABUSE, NEGLECT OR EXPLOITATION HAS OCCURRED. HOWEVER, AT THE TIME THE INVESTIGATION IS INITIATED, OR DURING THE COURSE OF THE INVESTIGATION, THE ADULT WHO IS THE SUBJECT OF THE REPORT CEASES TO BE AT RISK OF FURTHER ABUSE, NEGLECT OR EXPLOITATION (22 VAC 40-740-40).

The risk(s) to the adult no longer exists because:

- 1) The adult is a resident in an institutional facility and the perpetrator of the abuse, neglect or exploitation has been permanently terminated as an employee of the facility. The adult is no longer at risk and the case will be closed.
- 2) The subject of the report died during the course of the investigation and there was a preponderance of evidence of abuse, neglect or exploitation. The adult is no longer at risk and the case will be closed. The case shall be reported to the local law enforcement agency and the medical examiner when there is a suspicion that the death was the result of abuse or neglect.
- 3) The victim of abuse, neglect or exploitation was permanently relocated and, thus, is not expected to return to the setting where the abuse, neglect or exploitation occurred. The adult is no longer at risk and the case will be closed.
- 4) The perpetrator of abuse, neglect or exploitation is another patient/resident who has been permanently separated from the victim so that future contact between the two is not possible. The adult is no longer at risk and the case will be closed.
- 5) For other reasons, the risk of abuse, neglect or exploitation has been removed. The adult is no longer at risk and the case will be closed.

15.3.5. "Unfounded"

THIS DISPOSITION SHALL BE USED WHEN:

A REVIEW OF THE FACTS DOES NOT SHOW A PREPONDERANCE OF EVIDENCE THAT ABUSE, NEGLECT OR EXPLOITATION OCCURRED OR THAT THE ADULT IS AT RISK OF ABUSE, NEGLECT OR EXPLOITATION (22 VAC 40-740-40).

- 1) If the APS worker is unable to complete the investigation, or there is no preponderance of evidence of abuse, neglect or exploitation, the disposition should be unfounded.

- 2) If the disposition is unfounded, adult protective services are not offered. Adult services may be offered if the adult is eligible for services and agrees to the service delivery.
- 3) For an investigation in an ongoing case, the case will remain open to the appropriate service(s).
- 4) For a new case, appropriate adult services may be offered or the case should be closed.

15.3.6. “Invalid”

If, after an investigation has been initiated, the report is found not to meet the criteria of a valid report, the APS worker should select “Invalid” in the disposition drop-down box in ASAPS.

16. REPORT TO BE FILED

Upon determining that the adult needs protective services, the need for protective services no longer exists, the report is unfounded or determined to be invalid, the APS worker documents his finding on the Investigation screen in ASAPS (See ASAPS User’s Manual).

16.1. APS Report Form

After completing the Report and Investigation screens in ASAPS, the APS report form can be printed if needed. A copy of the “Printable” format can be found in Appendix A.

17. NOTIFICATIONS/TIME FRAMES

A NOTICE OF THE COMPLETION OF THE INVESTIGATION MUST BE MADE IN WRITING AND SHALL BE MAILED TO THE REPORTER WITHIN 10 WORKING DAYS OF THE COMPLETION OF THE INVESTIGATION (22 VAC 40-740-40).

If the person making the report is a mandated reporter, the notice of the completed investigation must be in writing and should be mailed within ten working days of the completion of the investigation. The Notification screen in ASAPS is used to document these required letters (See Appendices C-1 through C-4 for copies of these sample letters). The notice should inform the reporter that his/her report has been investigated and that necessary action has been taken. A copy of the written notice to the mandated reporter should be filed in the case record.

If the person making the report is a voluntary reporter, the notice of the completed investigation must be written and should be provided within ten working days of the completion of the investigation. The APS worker should inform the reporter that his/her report has been investigated and that necessary action has been taken. Oral notification may be given if the voluntary reporter did not wish to provide an address and should be documented on the Notification screen in ASAPS.

17.1 Notification to the Adult or His/Her Legal Guardian and/or Conservator or Responsible Person

The adult who is the subject of the investigation or his/her legally appointed guardian and/or conservator or responsible person should be informed of the findings of the investigation. This notification may be either oral or written and should be documented in the case narrative within ten working days of the completion of the investigation.

If, in the APS worker's judgment, informing the adult or his/her legal guardian and/or conservator or responsible person would not be appropriate, the reason(s) should be documented in the APS assessment narrative in ASAP.

17.2 Referrals to Law Enforcement, Medical Examiners, and Commonwealth Attorneys

If the APS report or the investigative findings indicate that sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm has occurred, as those terms are defined in the criminal section § 18.2-369 of the *Code of Virginia*, and Section 4 of this chapter, the APS worker must report the case immediately to local law enforcement. If the APS report or the investigative findings indicate there is a suspicious death that may have been the result of abuse or neglect, the APS worker must report the case immediately to the appropriate medical examiner. See Appendix N for medical examiner contact information. The Commonwealth's attorney may also be notified.

17.3 Reports to Departments / Programs with a Legitimate Interest

When other departments and/or programs, identified at Section 38 of this chapter, have a legitimate interest in the disposition of the report, the specific confidential case information that is outlined at Section 38.4.1 of this chapter may be disclosed to those departments/programs.

18. OPENING A CASE TO ADULT PROTECTIVE SERVICES

ONCE A DISPOSITION OF THE REPORT AND AN ASSESSMENT OF THE ADULT'S NEEDS AND STRENGTHS HAVE BEEN MADE, THE DEPARTMENT SHALL ASSESS THE ADULT'S SERVICE NEEDS. A CASE SHALL BE OPENED FOR ADULT PROTECTIVE SERVICES WHEN:

- 1) THE DISPOSITION IS THAT THE ADULT NEEDS PROTECTIVE SERVICES; and
- 2) THE SERVICE NEEDS ARE IDENTIFIED; and
- 3) THE ADULT AGREES TO ACCEPT PROTECTIVE SERVICES OR PROTECTIVE SERVICES ARE ORDERED BY THE COURT (22 VAC 40-740-60).

A service application must be completed when services are to be delivered beyond the investigation. THE APPLICATION PROCESS IS DESIGNED TO ASSURE THE PROMPT PROVISION OF NEEDED ADULT PROTECTIVE SERVICES INCLUDING SERVICES TO

ADULTS WHO ARE NOT ABLE TO COMPLETE AND SIGN A SERVICE APPLICATION (22 VAC 40-740-31).

The following persons may complete and sign a service application for adult protective services on behalf of an adult in need of services:

- 1) THE ADULT WHO WILL RECEIVE THE SERVICES OR THE ADULT'S LEGALLY APPOINTED GUARDIAN OR CONSERVATOR;
- 2) SOMEONE AUTHORIZED BY THE ADULT; OR
- 3) THE LOCAL DEPARTMENT (22 VAC 40-740-31).

The APS worker may complete and sign the service application when the adult is believed to be incapacitated, in cases of an emergency, or when the adult verbally accepts services but does not sign the application. The case record should document reason(s) for the department-initiated service application at the bottom of the service application or within the case narrative.

19. SERVICE PLANNING AND SERVICE DELIVERY

19.1. The Service Plan

A SERVICE PLAN WHICH IS BASED ON THE INVESTIGATIVE FINDINGS AND THE ASSESSMENT OF THE ADULT'S NEED FOR PROTECTIVE SERVICES SHALL BE DEVELOPED. THE SERVICE PLAN IS THE BASIS FOR THE ACTIVITIES THAT THE WORKER, THE ADULT, AND OTHER PERSONS WILL UNDERTAKE TO PROVIDE THE SERVICES NECESSARY TO PROTECT THE ADULT (22 VAC 40-740-60).

19.2. Assessment

Upon determining that protective services will be provided, the APS worker must complete a full Virginia Uniform Assessment Instrument (UAI). The UAI in ASAPPS may be used to meet this requirement (See ASAPPS User's Manual).

19.3. Service Plan Requirements

The development of the service plan involves reaching agreement with the adult and with formal and informal community resources regarding a specific, time-limited plan for addressing needs and for utilizing available resources in order to eliminate or mitigate the risk to the adult of abuse, neglect or exploitation. The plan should include initial linkages with community supports and ongoing contacts to assess service delivery and make appropriate modifications to the plan.

Services may also be provided to the perpetrator, as appropriate, in order to stop the abuse, neglect or exploitation and protect the adult (e.g., respite care may be appropriate to a family caregiver whose abusive behavior is related to the stress of unrelieved caregiving).

Each open case shall have a service plan that addresses the protective service needs of the adult. The Service Plan in ASAPS shall be used (See ASAPS User's Manual).

The information in the service plan will vary according to the case situation and will be based on the investigative findings, the assessment, and the adult's preferences.

19.4. Participation of the Adult

When the service plan is being developed, the APS worker should discuss all possible resources and services with the adult. When the adult subject of the service plan has capacity, his/her participation in the development of his/her service plan is essential. The adult needs to be presented with choices, educated about those choices, and then allowed to decide how he/she wants to live, as long as he/she has capacity to make decisions.

THE ADULT PROTECTIVE SERVICES PROGRAM SHALL RESPECT THE RIGHTS OF ADULTS WITH CAPACITY TO CONSIDER OPTIONS OFFERED BY THE PROGRAM AND REFUSE SERVICES, EVEN IF THOSE DECISIONS DO NOT APPEAR TO REASONABLY BE IN THE BEST INTERESTS OF THE ADULT (22 VAC 40-740-40).

19.5. Participation of the Adult's Representatives

In serving incapacitated adults, there may be particular areas related to the participation of the adult in the service plan that will need to be addressed. They include:

- 1) When the adult has a legally appointed guardian or conservator, that person must be respected as a spokesperson for the adult.
- 2) When the adult has an informal representative (usually a family member), this person should participate in the development of the service plan. The adult should also be included whenever possible.
- 3) If the adult's representative is incapable or unwilling to assure the adult's protection, the department needs to take action to insure the needed protection. When appropriate, the service plan can be used to chart out a succession of activities from the least to the most restrictive level.

19.6. Incapacitated Adult with No Representatives

When the adult appears to be an incapacitated adult but does not have either a legal or an informal representative or the representative is the alleged perpetrator of the abuse, neglect or exploitation, the APS worker may need to complete a service plan without the participation of the adult or the adult's representative. In this situation, a service plan objective will be to secure appropriate representation for the adult. (See Section 21, Judicial Proceedings.)

19.7. Review of Available Resources

The APS worker should identify the services needed to protect the adult.

It is necessary for the APS worker to be aware of resources that are available to alleviate the situation that is causing the adult to be abused, neglected, or exploited or at risk of abuse, neglect or exploitation.

The APS worker should consider the extent to which the adult is able to participate in implementing the service plan. Responsible relatives or other appropriate persons may be available to help facilitate resolution of the problem. In some cases, family and/or friends will be able to meet some of the adult's needs and the local department may be needed only to provide guidance and support.

The APS worker needs to identify other professionals necessary to facilitate resolution of the problem. The APS worker should make full use of the knowledge and expertise of other professionals in determining the adult's ability or lack of ability to care for himself/herself or his/her affairs in planning for the adult and in service delivery. Physicians, psychiatrists, public health and mental health professionals, domestic violence professionals, and professionals in the field of aging should be appropriately involved.

19.8. Community-Based Services

If the adult is found to be in need of protective services, consideration must first be given to providing the needed services in the adult's own home or place of residence. Any one or a combination of services (e.g., medical care, counseling, homemaker/chore/companion services, day services, nutrition services, transportation, financial management, financial assistance for which the adult may be eligible, informal supportive services, home repair, protective orders, etc.) should be considered as methods of protection in one's own home.

19.9. Placement Services

Some adults may be unable to remain in their own homes even with a variety of services. Placement in an appropriate out-of-home setting should then be considered.

19.9.1. Placement with Consent of the Adult

When placement of the adult in a nursing facility, an assisted living facility, an adult foster care home, or some other out-of-home placement is indicated, it is important for the APS worker to have the consent of the adult, the adult's guardian, or a substitute decision-maker designated by the adult. Without the adult's consent or consent by one of the substitute decision-makers, a change of residence for that adult will require legal action.

19.9.2. Voluntary Admission to a State Hospital

ANY STATE FACILITY SHALL ADMIT ANY PERSON REQUESTING ADMISSION WHO HAS BEEN:

- 1) SCREENED BY THE COMMUNITY SERVICES BOARD OR BEHAVIORAL HEALTH AUTHORITY THAT SERVES THE CITY OR COUNTY WHERE THE PERSON RESIDES, OR, IF IMPRACTICAL, WHERE THE PERSON IS LOCATED,
- 2) EXAMINED BY A PHYSICIAN ON THE STAFF OF THE STATE FACILITY; AND
- 3) DEEMED BY BOTH THE BOARD OR AUTHORITY AND THE STATE FACILITY PHYSICIAN TO BE IN NEED OF TREATMENT, TRAINING OR HABILITATION IN A STATE FACILITY. (*Code of Virginia*, § 37.2-805).

19.9.3. Placement When the Adult Lacks Capacity to Consent

See Section 21 (Judicial Proceedings) of this chapter that addresses the provision of protective services when the adult lacks the capacity to consent.

19.10. Protective Services Ordered by the Court

If an adult needs protective services and lacks the capacity to consent to receive the services, the Court may order these services through:

- 1) An emergency order for adult protective services (*Code of Virginia*, § 63.2-1609);
- 2) A judicial authorization of treatment and detention of certain persons (*Code of Virginia*, § 37.2-1101);
- 3) The appointment of a guardian or conservator in accordance with the *Code of Virginia*, § 37.2-1000 ;
- 4) Medical treatment for certain persons incapable of giving informed consent (*Code of Virginia*, § 54.1-2970); or
- 5) Emergency custody (*Code of Virginia*, § 37.2-808).and involuntary temporary detention (*Code of Virginia*, § 37.2-809).

19.11. Purchased Services

Services may be purchased for the adult during an investigation as well as during the service delivery phase when the need for the service(s) has been documented. In providing protective services to adults, purchased service components may be provided, within limits approved by the local board, without regard to income, in order to stabilize the situation of an adult and provide the needed protection.

Purchased services that are often identified for APS include home-based services, adult day services, home-delivered or congregate meals, emergency shelter, transportation,

other emergency needs, and any other services to stabilize the situation and/or prevent institutionalization.

19.12. The Least Restrictive Level of Intervention

The least restrictive intervention is the most appropriate. The adult has the right to make decisions about himself/herself and his/her affairs unless he/she has voluntarily given that right to another person or the Court has assigned that right to another person.

19.13. Components of the Service Plan

All APS service plans must include the following components:

- 1) Goal(s)
- 2) Unmet needs
- 3) Objectives
- 4) Tasks
- 5) Target dates for meeting objectives

Goals and objectives are developed after the situation has been assessed and a determination made regarding the protective services needed and the adult's preferences.

19.14. Goals

The following are goals for APS:

- 1) To stop the abuse, neglect or exploitation by providing the protection the adult requires with the least restriction of his/her liberty;
- 2) To assist the adult in remaining in his/her own home as long as possible and as long as this is the most appropriate plan of care;
- 3) To restore or retain independent functioning to the greatest extent possible; and/or
- 4) To assist in arranging out-of-home placement when that is appropriate and it is the choice of the adult or guardian or the Court orders.

19.15. Unmet needs

An unmet need is an identified need that is not being met in a way that assures the safety and well-being of the adult. The unmet needs are identified and documented on the UAI.

19.16. Objectives

Objectives should reflect the desired outcome(s) of service delivery. Objectives and services selected should be relevant to the goal(s).

Each objective shall state clearly WHAT will be achieved in order to accomplish the goals(s).

Objectives should be:

- 1) Identified to eliminate or diminish identified need(s);
- 2) Stated in terms of measurable results to be achieved or desired outcome(s);
- 3) As behaviorally specific as possible; and
- 4) Updated as the adult's situation changes.

19.17. Tasks

Planning HOW to achieve each objective is an essential element in developing a workable service plan. Tasks describe the actual provision of services, identifying specifically WHO will be involved in accomplishing each task and WHEN services will be provided. All participating service providers will be identified in the Service Plan.

19.18. Target Dates

The service plan must include date(s) for achievement of objective(s).

20. IMPLEMENTATION OF THE SERVICE PLAN

Implementation is the delivery of the services needed to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through casework services and case management by the APS worker, through informal support, or through referral. The continuous monitoring of the adult's progress towards reaching the service plan goals and revising the objectives and tasks in response to that progress is a part of the implementation phase.

Once the investigation has been completed and a service plan has been developed, the APS worker has the responsibility to:

- 1) Make contact with the adult to clarify any issues around service delivery (what services, provided by whom, for how long, etc.);
- 2) Initiate delivery of those services identified in the service plan;
- 3) Monitor the progress made toward meeting the objectives and time frames set forth in the service plan and reassess and revise the service plan as appropriate; and
- 4) Make a face-to-face or telephone contact with the adult at least monthly and more frequently as needed to monitor progress and assure protection of the adult. The APS worker should verify by observation or personal interview that the adult is receiving the planned services. If the monthly contact with the adult does not occur, the reason(s) should be documented in the case narrative.

21. JUDICIAL PROCEEDINGS

Protective services may be provided without the consent of the adult when the adult lacks capacity to consent and the Court orders the provision of the services needed to protect the adult.

It is the shared responsibility of the local department and the Circuit Court to protect incapacitated adults from abuse, neglect or exploitation. A cooperative working arrangement between the local department and the Court is essential to provide effective adult protective services. Procedures will vary across localities.

The filing of petitions is the practice of law and must be performed by the attorney representing the local department. APS workers may offer background information and other facts and provide other assistance, as requested, by the attorney representing the local department.

21.1. Access to Provide Protective Services

IF A LOCAL DEPARTMENT IS DENIED ACCESS TO AN ADULT FOR WHOM THERE IS REASON TO SUSPECT THE NEED FOR ADULT PROTECTIVE SERVICES, THEN THE LOCAL DEPARTMENT MAY PETITION THE CIRCUIT COURT FOR AN ORDER ALLOWING ACCESS OR ENTRY OR BOTH. UPON A SHOWING OF GOOD CAUSE SUPPORTED BY AN AFFIDAVIT OR TESTIMONY IN PERSON, THE COURT MAY ENTER AN ORDER PERMITTING SUCH ACCESS OR ENTRY (*Code of Virginia*, § 63.2-1605).

21.2. Order to Enjoin Interference

NO PERSON SHALL INTERFERE WITH THE PROVISION OF ADULT PROTECTIVE SERVICES TO AN (i) ADULT WHO REQUESTS OR CONSENTS TO RECEIVE SUCH SERVICES, OR (ii) FOR WHOM CONSENT HAS BEEN LAWFULLY GIVEN. IN THE EVENT THAT INTERFERENCE OCCURS ON A CONTINUING BASIS, THE DIRECTOR MAY PETITION THE COURT OF COMPETENT JURISDICTION TO ENJOIN SUCH INTERFERENCE (*Code of Virginia*, § 63.2-1610).

This applies when the APS worker has made every effort to alleviate the fear or hostility of the person who interferes with the provision of protective services and to involve or work with such person.

21.3. Emergency Order for Adult Protective Services (*Code of Virginia*, § 63.2-1609)

IF AN ADULT LACKS THE CAPACITY TO CONSENT TO RECEIVE ADULT PROTECTIVE SERVICES, THESE SERVICES MAY BE ORDERED BY THE COURT ON AN INVOLUNTARY BASIS THROUGH AN EMERGENCY ORDER PURSUANT TO § 63.2-1609 OR BY A GUARDIAN OR CONSERVATOR APPOINTED PURSUANT TO ARTICLE 1 (§37.2-1000) OF SUBTITLE IV CHAPTER 4 OF TITLE 37.2 (*Code of Virginia*, § 63.2-1608).

If the adult is in need of protective services, an emergency exists, and the adult is incapacitated and lacks the capacity to consent to receive adult protective services, a petition should be filed through the department attorney for a hearing to obtain the earliest possible Court date and requesting Court authorization to provide protective services on an emergency basis.

An emergency order can be granted for 15 days and may be extended for an additional five days.

See Appendix D for a "SAMPLE NOTICE OF HEARING TO CONSIDER ORDERING EMERGENCY SERVICES." See Appendix E for a "SAMPLE PETITION FOR EMERGENCY PROTECTIVE SERVICES AND APPOINTMENT OF A TEMPORARY GUARDIAN." See Appendix F for a "SAMPLE ORDER OF EMERGENCY PROTECTIVE SERVICES."

The following procedure is followed when an emergency order is requested:

A. Petition shall include:

- 1) The name, address, and interest of the petitioner;
- 2) The name, age, and address of the adult in need of protective services;
- 3) The nature of the emergency;
- 4) If the 24-hour notice will seriously jeopardize the adult's welfare, clearly explain in the petition why the notice should be waived;
- 5) The nature of the adult's incapacity;
- 6) Evidence of the adult's incapacity and lack of capacity to consent;
- 7) Facts showing attempts to obtain the adult's consent and the outcomes of attempts;
- 8) The specific authority requested and rationale for the request;
- 9) The proposed adult protective services; and
- 10) If the adult who is subject of the emergency order is indigent, the department should request that the costs of the proceeding be borne by the Commonwealth (see Section 22.1.2 of this chapter).

- B. An APS worker or other person appointed as temporary guardian should immediately request a copy of the Court order and certification to document authority to carry out the order;
- C. If the 15 days allotted is inadequate, the APS worker should petition the Court for a renewal as soon as it is realized that additional time is needed;
- D. If an on-going guardian will be needed, the APS worker needs to locate a suitable person to be appointed; and

- E. Upon completion of emergency services, the APS worker files a report with the Court to inform the Court about:
- 1) Services provided during the emergency guardianship period;
 - 2) The status of the adult; and
 - 3) Any plan for on-going protection of the adult.

21.4. Judicial Authorization of Treatment and Detention of Certain Persons (Code of Virginia, § 37.2-1100)

If the protective service needed is a specific treatment or course of treatment for a mental or physical disorder, the local department or any person may file a petition with the Circuit Court, a District Court or special justice or with a judge requesting authorization of the specific treatment or course of treatment. Before authorizing treatment pursuant to this section, the Court shall find:

- 1) THAT THERE IS NO LEGALLY AUTHORIZED PERSON AVAILABLE TO GIVE CONSENT;
- 2) THAT THE PERSON WHO IS THE SUBJECT OF THE PETITION IS INCAPABLE OF MAKING AN INFORMED DECISION REGARDING A SPECIFIC TREATMENT OR COURSE OF TREATMENT OR IS PHYSICALLY OR MENTALLY INCAPABLE OF COMMUNICATING SUCH A DECISION;
- 3) THAT THE PERSON WHO IS THE SUBJECT OF THE PETITION IS UNLIKELY TO BECOME CAPABLE OF MAKING AN INFORMED DECISION OR OF COMMUNICATING AN INFORMED DECISION WITHIN THE TIME REQUIRED FOR DECISION; AND
- 4) THAT THE PROPOSED COURSE OF TREATMENT IS IN THE BEST INTEREST OF THE PERSON. HOWEVER, THE COURT SHALL NOT AUTHORIZE A PROPOSED COURSE OF TREATMENT THAT IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE TO BE CONTRARY TO THE PERSON'S RELIGIOUS BELIEFS OR BASIC VALUES, UNLESS THE TREATMENT IS NECESSARY TO PREVENT DEATH OR A SERIOUS IRREVERSIBLE CONDITION. THE COURT SHALL TAKE INTO CONSIDERATION THE RIGHT OF THE PERSON TO RELY ON NONMEDICAL, REMEDIAL TREATMENT IN THE PRACTICE OF RELIGION IN LIEU OF MEDICAL TREATMENT (*Code of Virginia*, § 37.2-1101).

21.5. Appointment of a Guardian and/or Conservator (Code of Virginia, § 37.2-1001)

Any person may file a petition for the appointment of a guardian or conservator with the Circuit Court of the county or city in which the adult is a resident or is located or in which the adult resided immediately prior to becoming a patient in a hospital or a resident in a nursing facility, state hospital for the mentally ill, assisted living facility or any other

similar institution. If the petition is for the appointment of a conservator for a nonresident with property in the state, the petition may be filed in the city or county in which the adult's property is located. See Appendix G, "PROTECTING VULNERABLE ADULTS THROUGH GUARDIANSHIP AND/OR CONSERVATORSHIP," for procedures for petitioning for a guardian and/or conservator.

21.6. Appointment of a Guardian

If the adult has become incapacitated to the extent that he/she lacks the capacity to meet essential requirements for his/her health, care, safety or therapeutic needs without the assistance or protection of a guardian, the local department may petition the Circuit Court to appoint a guardian. (See Appendix G of this chapter.)

21.7. Appointment of a Conservator

If an adult has become incapacitated to the extent that he/she lacks the capacity to:

- 1) Manage property or financial affairs;
- 2) Provide for his/her support; or
- 3) Provide for the support of legal dependents without the assistance or protection of a conservator.

The local department may petition the Circuit Court to appoint a conservator (*Code of Virginia*, § 37.2-1001). (See Appendix G of this chapter.)

21.8. Procedure in Absence of an Advance Directive (*Code of Virginia*, § 54.1-2986)

When an attending physician of an adult patient determines that the adult is incapable of making an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of treatment because of mental illness, mental retardation, or any other mental disorder, or a physical disorder that precludes communication or impairs judgment, and if the adult patient has not made an advance directive, the attending physician may provide, withhold, or withdraw from the adult patient any medical or surgical care or treatment upon the authorization of any of the following persons, in the specified order of priority:

- 1) A guardian for the patient. (This shall not be construed to require the appointment of a guardian in order that a treatment decision can be made.);
- 2) The patient's spouse;
- 3) An adult child of the patient;
- 4) A parent of the patient;
- 5) An adult brother or sister of the patient; or
- 6) Any other relative of the patient in the descending order of blood relationship.

For the purposes of this section “incapable of making an informed decision” means unable to understand the nature, extent or probable consequences of a proposed medical decision, or unable to make a rational evaluation of the risks and benefits of the proposed decision as compared with the risks and benefits of alternatives to that decision.

21.9. Involuntary Admission

ANY PERSON ALLEGED TO HAVE A MENTAL ILLNESS TO A DEGREE THAT WARRANTS TREATMENT IN A FACILITY MAY BE ADMITTED TO A FACILITY BY COMPLIANCE WITH ONE OF THE FOLLOWING ADMISSION PROCEDURES:

1. VOLUNTARY ADMISSION BY THE PROCEDURE DESCRIBED IN § 37.2-805, OR
2. INVOLUNTARY ADMISSION BY THE PROCEDURE DESCRIBED IN §§ 37.2-809 THROUGH 37.2-820 (*Code of Virginia*, § 37.2-801).

When hospitalization in a mental health or mental retardation facility is the needed service, the APS worker should consult with the local community services board for procedures in that locality.

Criteria for commitment include:

- 1) The adult presents an imminent danger to himself/herself or others as a result of mental illness, or
- 2) The adult has otherwise been proven to be so seriously mentally ill as to be substantially unable to care for himself/herself, and
- 3) There is no less restrictive alternative to institutional confinement and treatment, and alternatives to involuntary hospitalization were investigated and deemed not suitable.

21.10. Mental Health Emergency Custody (*Code of Virginia*, § 37.2-808) and Involuntary Temporary Detention Orders (*Code of Virginia*, § 37.2-809)

The Emergency Custody Order (ECO) will require that the adult be taken into custody and transported to a convenient location to assess the need for hospitalization or treatment. The evaluation will be conducted by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness. The period of custody may not exceed four hours. If, after examination of all available evidence, the magistrate concludes that the adult is mentally ill and in need of hospitalization, the magistrate may issue a temporary detention order (TDO) that may include transportation to a medical facility for emergency medical evaluation and/or treatment.

A magistrate may issue a TDO without an emergency custody order proceeding. A magistrate may also issue a TDO without a prior in-person evaluation if:

- 1) THE PERSON HAS BEEN PERSONALLY EXAMINED WITHIN THE PREVIOUS 72 HOURS BY AN EMPLOYEE OR DESIGNEE OF THE LOCAL COMMUNITY SERVICES BOARD OR
- 2) THERE IS A SIGNIFICANT PHYSICAL, PSYCHOLOGICAL, OR MEDICAL RISK TO THE PERSON OR TO OTHERS ASSOCIATED WITH CONDUCTING SUCH EVALUATION (*Code of Virginia*, §37.2-809).

A judge or a magistrate may issue an emergency custody order (ECO) based on a sworn petition of any responsible person or based on finding probable cause to believe that the person:

- 1) HAS MENTAL ILLNESS;
- 2) PRESENTS AN IMMINENT DANGER TO HIMSELF OR OTHERS AS A RESULT OF MENTAL ILLNESS OR IS SO SERIOUSLY MENTALLY ILL AS TO BE SUBSTANTIALLY UNABLE TO CARE FOR SELF;
- 3) IS IN NEED OF HOSPITALIZATION OR TREATMENT; AND
- 4) IS INCAPABLE OF VOLUNTEERING OR UNWILLING TO VOLUNTEER FOR HOSPITALIZATION OR TREATMENT (*Code of Virginia*, § 37.2-808).

21.11. Preliminary Protective Order in Cases of Family Abuse (*Code of Virginia* , §§ 16.1-253.1 and 16.1-228)

AN ADULT WHO IS OR HAS BEEN, WITHIN A REASONABLE PERIOD OF TIME, SUBJECTED TO FAMILY ABUSE MAY PETITION THE JUVENILE AND DOMESTIC RELATIONS COURT FOR A PRELIMINARY ORDER OF PROTECTION AGAINST AN ALLEGEDLY ABUSING PERSON IN ORDER TO PROTECT THE HEALTH AND SAFETY OF THE PETITIONER OR ANY FAMILY OR HOUSEHOLD MEMBER OF THE PETITIONER (*Code of Virginia*, §16.1-253.1).

If the adult eligible for adult protective services is a victim of family abuse, the preliminary protective order may be used to provide temporary protection. Abuse is considered “family abuse” when an act of violence is committed by the abuser against the abuser’s family member:

- 1) Spouse or former spouse, whether or not the spouse or former spouse resides in the same house with the abuser;
- 2) Parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the abuser;
- 3) Mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the abuser;
- 4) Any individual who has a child in common with the abuser whether or not the individual and the abuser have been married or lived together at any time; and

- 5) Any individual who cohabits or who, within the previous 12 months, cohabited with the abuser, and any children of either of them then residing in the same home with the abuser.

21.12. Emergency Protective Orders Authorized in Certain Cases (*Code of Virginia*, § 16.1-253.4)

When a law-enforcement officer or an allegedly abused person asserts under oath and a judge or magistrate finds reasonable grounds to believe that a person has committed assault and battery against a family or household member and there is probable danger of a further offense against a family or household member by the person, the judge or magistrate may issue a written or verbal emergency protective order to prohibit contact between the parties, grant the family or household member possession of the premises occupied by the parties, and exclude from the premises the offending party.

21.13. Arrest without a Warrant in Cases of Assault and Battery against a Family or Household Member (*Code of Virginia*, §§ 19.2-81.3 and 18.2-57.2)

Law enforcement officers must make an arrest without a warrant in cases in which family or household members are abused and when there is probable cause that assault and battery has occurred (*Code of Virginia*, § 18.1-57.2).

21.14. Criminal Abuse and Neglect of Incapacitated Adults (*Code of Virginia*, § 18.2-369)

IT SHALL BE UNLAWFUL FOR ANY RESPONSIBLE PERSON TO ABUSE OR NEGLECT ANY INCAPACITATED ADULT AS DEFINED IN THIS SECTION. ANY RESPONSIBLE PERSON WHO ABUSES OR NEGLECTS AN INCAPACITATED ADULT IN VIOLATION OF THIS SECTION AND THE ABUSE OR NEGLECT DOES NOT RESULT IN SERIOUS BODILY INJURY OR DISEASE TO THE INCAPACITATED ADULT SHALL BE GUILTY OF A CLASS 1 MISDEMEANOR. ANY RESPONSIBLE PERSON WHO IS CONVICTED OF A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SUBSECTION SHALL BE GUILTY OF A CLASS 6 FELONY.

ANY RESPONSIBLE PERSON WHO ABUSES OR NEGLECTS AN INCAPACITATED ADULT IN VIOLATION OF THIS SECTION AND THE ABUSE OR NEGLECT RESULTS IN SERIOUS BODILY INJURY OR DISEASE TO THE INCAPACITATED ADULT SHALL BE GUILTY OF A CLASS 4 FELONY. ANY RESPONSIBLE PERSON WHO ABUSES OR NEGLECTS AN INCAPACITATED ADULT IN VIOLATION OF THIS SECTION AND THE ABUSE OR NEGLECT RESULTS IN THE DEATH OF THE INCAPACITATED ADULT IS GUILTY OF A CLASS 3 FELONY.

Abuse and neglect of an incapacitated adult can be prosecuted as a criminal offense when the abuse or neglect is perpetrated by a “responsible person” as defined in Section 4 of this chapter.

Abuse and neglect meeting definitions under *Code of Virginia*, § 18.2-369 should be referred to the Commonwealth’s Attorney for possible prosecution.

22. REIMBURSEMENT FOR LEGAL SERVICES

Legal representation for advice to and representation of the department on an adult-specific basis for cases before the Court related to adult protective services may be reimbursed from administration funds or Budget Line 895 (APS Purchase of Services) as long as the adult is eligible for adult protective services.

When a local department is the petitioner and the subject of the proceedings is indigent, all fees and Court costs will be waived by the Court. The *Code of Virginia* § 17.1-266 prohibits payment to clerks, sheriffs or other officers from the state treasury for services rendered in Commonwealth cases, except when it is allowed by statute. Local departments of social services, as recipients of state funds, are considered Commonwealth agencies and are included in this provision.

22.1. Payment for Emergency Order Proceedings

22.1.1. When Cost Is Borne by the Subject of the Petition

IF THE ADULT IS NOT INDIGENT, THE COURT MAY ORDER THAT THE COST OF THE PROCEEDING SHALL BE BORNE BY SUCH ADULT (*CODE OF VIRGINIA*, § 63.2-1609).

22.1.2. When Cost Is Borne by the Commonwealth

IF THE ADULT IS INDIGENT, THE COST OF THE PROCEEDING SHALL BE BORNE BY THE COMMONWEALTH (*CODE OF VIRGINIA*, § 63.2-1609).

22.2. Payment for Guardianship Proceedings

22.2.1. When Cost Is Borne by the Petitioner

The petitioner is responsible for payment of the filing fee and costs. The Court may waive service fees and Court costs if it is alleged under oath that the estate of the adult is unavailable or insufficient.

IF A GUARDIAN OR CONSERVATOR IS APPOINTED AND THE ESTATE OF THE INCAPACITATED PERSON IS AVAILABLE AND SUFFICIENT THEREFOR, THE COURT SHALL ORDER THAT THE PETITIONER BE REIMBURSED FROM THE ESTATE FOR ALL COSTS AND FEES (*Code of Virginia*, § 37.2-1008).

22.2.2. When Cost Is Borne by the Commonwealth

IF THE ADULT SUBJECT OF THE PETITION IS DETERMINED TO BE INDIGENT, ANY FEES AND COSTS OF THE PROCEEDING THAT ARE FIXED

BY THE COURT OR TAXED AS COSTS SHALL BE BORNE BY THE COMMONWEALTH (*Code of Virginia*, § 37.2-1008).

22.3. Payment for Guardians Ad Litem and Other Attorney Fees

22.3.1. When Cost Is Borne by the Petitioner

THE GUARDIAN AD LITEM SHALL BE PAID A FEE THAT IS FIXED BY THE COURT TO BE PAID BY THE PETITIONER OR TAXED AS COSTS, AS THE COURT DIRECTS (*Code of Virginia*, § 37.2-1003).

COUNSEL APPOINTED BY THE COURT SHALL BE PAID A FEE THAT IS FIXED BY THE COURT TO BE TAXED AS PART OF THE COSTS OF THE PROCEEDING (*Code of Virginia*, § 37.2-1006).

22.3.2. When Cost Is Borne by the Commonwealth

IN ANY PROCEEDING FILED PURSUANT TO THIS ARTICLE, IF THE ADULT SUBJECT OF THE PETITION IS DETERMINED TO BE INDIGENT, ANY FEES AND COSTS OF THE PROCEEDING WHICH ARE FIXED BY THE COURT OR TAXED AS COSTS SHALL BE BORNE BY THE COMMONWEALTH (*Code of Virginia*, § 37.2-1008).

22.3.3 Payment for Guardianship Proceedings for Medicaid Referrals

When a local department petitions for the appointment of a guardian for an adult who was referred by an eligibility worker for the purpose of determining whether the adult needs a guardian appointed to apply or re-apply for Medicaid on his/her behalf, the cost of petitioning, which cannot be waived by the Court, is reimbursable through a fund established at the Department of Social Services for this purpose. The funds are available only for those cases referred by an eligibility worker and in which the appointment of a guardian is necessary for making and signing a Medicaid application. The forms used to request reimbursement for the costs of these guardianship proceedings are found in Appendix R-1 and R-2, "MEDICAID REFERRAL TO APS TO REQUEST ASSESSMENT FOR GUARDIANSHIP", and the instructions for completing the form are found in Appendix S.

22.4. Payment for Psychological and Physical Examination

The cost of psychological and physical examinations may be paid from administrative funds when they are not available under Title XVIII (Medicare), Title XIX (Medicaid), or other sources.

The cost of an evaluation for an adult who has been referred to APS by an eligibility worker to determine whether the adult needs a guardian appointed in order to apply for

Medicaid on his/her behalf may be reimbursed using the forms found in Appendices R-1 and R-2.

22.5. Reimbursement for Cost of Providing Protective Services

The *Code of Virginia*, §§ 63.2-1608 and 63.2-1610, permits the Court to authorize reasonable reimbursement to the local department for the cost of providing protective services, excluding administrative costs.

Reimbursement to the local department would be authorized by the Court from the adult's assets after a finding that the adult is financially able to make such payment.

22.5.1. Involuntary Adult Protective services

THE ADULT SHALL NOT BE REQUIRED TO PAY FOR INVOLUNTARY ADULT PROTECTIVE SERVICES, UNLESS SUCH PAYMENT IS AUTHORIZED BY THE COURT UPON A SHOWING THAT THE PERSON IS FINANCIALLY ABLE TO PAY. IN SUCH EVENT THE COURT SHALL PROVIDE FOR REIMBURSEMENT OF THE ACTUAL COSTS INCURRED BY THE LOCAL DEPARTMENT IN PROVIDING ADULT PROTECTIVE SERVICES, EXCLUDING ADMINISTRATIVE COSTS (*Code of Virginia*, § 63.2-1608).

22.5.2. Voluntary Adult Protective Services

THE ACTUAL COSTS INCURRED BY THE LOCAL DEPARTMENT IN PROVIDING ADULT PROTECTIVE SERVICES SHALL BE BORNE BY THE LOCAL DEPARTMENT, UNLESS THE ADULT OR HIS REPRESENTATIVE AGREES TO PAY FOR THEM OR A COURT ORDERS THE LOCAL DEPARTMENT TO RECEIVE REASONABLE REIMBURSEMENT FOR THE ADULT PROTECTIVE SERVICES, EXCLUDING ADMINISTRATIVE COSTS, FROM THE ADULT'S ASSETS AFTER A FINDING THAT THE ADULT IS FINANCIALLY ABLE TO MAKE SUCH PAYMENT (*Code of Virginia*, § 63.2-1610).

23. EVALUATION / REASSESSMENT

23.1. Evaluation

The evaluation must address the effectiveness of the service plan in eliminating or mitigating the abuse, neglect or exploitation or risks of abuse, neglect or exploitation. The evaluation should indicate which objectives have been met. Unmet needs should be identified and reasons such needs remain unmet should be addressed. A brief summary of the effectiveness of the service plan should be documented in the "Evaluation of Services" section in the Service Plan in ASAPS.

23.2. Reassessment

A reassessment of the adult's situation and evaluation of the effectiveness of services provided must be conducted as frequently as indicated by changes in the adult's situation but not less frequently than every 12 months.

The UAI must be updated to reflect the findings from reassessments. The original UAI may be used by the APS worker who clearly notes changes and initials and dates the changes or the UAI should be updated in ASAPS (See ASAPS User's Manual).

The case should be continued for adult protective services, transferred, or closed based on the updated UAI and the evaluation.

23.2.1. Continue Adult Protective Services

The adult protective services case should be continued and the service plan updated to address current needs when:

- 1) The adult is being abused, neglected or exploited or is at risk of abuse, neglect or exploitation, and
- 2) Unmet needs are identified in the reassessment and/or evaluation.

23.2.2. Transfer to Adult Services

The adult protective services case should be transferred to adult services and the case type changed to reflect the current status of the case when:

- 1) The adult is no longer being abused, neglected or exploited and is not at risk of abuse, neglect or exploitation; and
- 2) The adult continues to need services but service needs are no longer protective in nature.

23.2.3. Close the Case

The adult protective services case should be closed when:

- 1) The goals and objectives outlined in the service plan have been attained and the adult is no longer at risk and has no other service needs;
- 2) The adult decides to terminate services and the local department determines that the adult has the capacity to consent and Court action is not warranted;
- 3) The adult moves out of the department's jurisdiction. If the adult continues to need protective services, a referral should be made to and case information shared with the locality to which the adult relocates; or
- 4) The adult dies.

23.2.4. Procedures for Closure

When a decision is made to close an adult protective services case, the APS worker shall:

- 1) Send a written notice of action to the adult and/or the adult's legally appointed guardian and/or conservator and other service providers who may be participating in the service plan.
- 2) Document in the case narrative the reasons for not notifying, if notification is not appropriate. (Refer to Volume VII, Section I, Chapter B, for additional information on closing a case.)
- 3) Close case in ASAPS.
- 4) Initiate referrals, if appropriate, to other services within the department, to other local departments of social services, or to community resources.

24. INVESTIGATIONS IN LONG-TERM CARE FACILITIES, ACUTE-CARE FACILITIES, AND OTHER GROUP CARE FACILITIES

For the purposes of this section, long-term care facilities, acute care facilities and other group care facilities include, but are not limited to:

- 1) Acute-care hospitals;
- 2) Nursing facilities;
- 3) Assisted living facilities;
- 4) State hospitals;
- 5) Private psychiatric facilities;
- 6) Group homes; and
- 7) Facilities that provide programs for adults for some part of the day (e.g., adult day services, senior centers, day treatment centers, sheltered workshops, and school systems).

Reports of suspected abuse, neglect or exploitation of adults perpetrated by employees of agencies providing home-based care to adults (e.g., hospices, home care organizations) shall be investigated according to procedures outlined in Sections 5 through 23 of this chapter.

All reports of suspected abuse, neglect or exploitation of adults in facilities are investigated without consideration of the relationship of the alleged perpetrator to the adult, i.e., the alleged perpetrator may be facility staff or faculty, persons visiting the facility, another resident, or any other person.

25. ACCEPTING REPORTS

THE LOCAL DEPARTMENT SHALL REFER ANY APPROPRIATE MATTER AND ALL RELEVANT DOCUMENTATION TO THE APPROPRIATE LICENSING, REGULATORY, OR LEGAL AUTHORITY FOR ADMINISTRATIVE ACTION OR CRIMINAL INVESTIGATION (*Code of Virginia*, § 63.2-1605).

Upon receipt of a valid report concerning a facility, the APS worker should immediately contact the appropriate licensing or regulatory agency to report the receipt of the information and coordinate an investigation if appropriate. Sexual abuse, criminal abuse and neglect or other criminal activity involving abuse, neglect or exploitation that places the adult in imminent danger of death or serious bodily harm should be immediately reported to local law enforcement and the APS worker should coordinate the investigation with law enforcement.

25.1. Person-Specific Reports

If the information received is such that the APS worker determines that the report is valid according to criteria set forth in this chapter, the APS worker shall assess the appropriateness of a joint investigation and determine who should participate in the joint investigation. Individual investigations must be conducted on each individual on whom a valid report is received.

If the information received alleges that a specific group(s) of residents within a facility or the entire population of the facility is abused, neglected or exploited or is at risk of abuse, neglect or exploitation, the local department will decide on the appropriateness of APS investigations on a case-by-case basis. The case-by-case decision will be based on the probability of mental or physical damage or injury to residents.

25.2. Resident-to-Resident Reports

When a report is received that both the alleged perpetrator and alleged victim of abuse, neglect or exploitation are residents of a long-term care facility, the report is considered valid if it meets validity criteria set forth in this chapter and one or more of the following situations are alleged:

- 1) One or more residents received injuries that required medical attention from a physician or a nurse; or
- 2) Sexual abuse of one resident by another; or
- 3) One resident profited financially at the expense of another resident; or
- 4) Abuse, neglect or exploitation of a resident at the hands of another resident is on-going; or
- 5) Facility staff has not taken action to stop and/or address the abuse, neglect or exploitation of the resident.

25.3. When the Perpetrator Resident Continues to Reside in the Facility

When an investigation of a report of resident to resident abuse, neglect or exploitation finds that one of the residents needs protection from the second resident, the service plan shall address how the resident in need of protection will be protected.

25.4. Incident Reports

A facility incident report that is made available to APS should be accepted as a report of suspected abuse, neglect or exploitation, and, if it meets the validity criteria, an investigation should be initiated.

25.5. Injuries of Unknown Origin

When a resident of a facility sustains an injury and the cause of the injury is unknown, and there is reason to suspect that the injury is the result of abuse, neglect or exploitation, an APS report should be taken and investigated. Reports of repeated injuries of unknown origin involving the same resident should be taken and investigated.

25.6. Sexual Abuse and Sexual Assault in Long-Term Care Facilities, Acute Care Facilities, and Other Group Care Facilities

When one adult does not consent to sexual activity, or when one or more adults involved in the sexual activity lack the capacity to consent, and sexual abuse and/or sexual assault is alleged, an APS investigation shall be initiated. The APS worker must immediately contact the local law-enforcement agency to report the allegation of sexual abuse and coordinate the investigation. If the law-enforcement agency does not investigate, the APS worker still must initiate the investigation within required timeframes.

25.7. Abuse, Neglect or Exploitation of a Resident Who Is Away from the Facility

If there is a report of suspected abuse, neglect or exploitation of a facility resident while that resident is away from the facility (e.g., during a home visit), procedures in Section 7 of this chapter shall be followed to determine which local department has responsibility for the investigation.

The local department with responsibility for the investigation will notify the facility's administrator of the report and will enlist the cooperation of the facility, where appropriate, in completing the investigation.

If the alleged abuse, neglect or exploitation occurred outside of the jurisdiction in which the facility is located, and if contact with the facility is essential to the investigation, the local department responsible for the investigation may request assistance from the local department in the jurisdiction in which the facility is located.

The investigating local department should provide appropriate information about the findings of the investigation to the facility as specified in Section 38 of this chapter. At the discretion of the APS worker, the same information may be provided to appropriate regulatory agencies.

25.8. Reports That Do Not Meet Validity Criteria for an APS Report

In some situations, criteria for a valid APS report are not met but the circumstances initially reported are within the purview of statutory or regulatory agencies. For example, the subject of the report has been permanently relocated or the facility staff person who is alleged to be the perpetrator has been permanently discharged from the facility.

If the information received is such that the APS worker determines that the report is not valid and does not meet criteria for an APS investigation but is within the purview of statutory or regulatory agencies, the APS worker must refer the person making the report to the appropriate regulatory authority. The APS worker should also promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The written summary should state the reason an APS investigation will not be conducted. The form in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES," may be used to provide the written statement and a copy filed in the client's case record (if available).

The invalid report may be entered into ASAPS following the procedures for ASAPS depending on whether the case is open, closed or a new APS case. The notification can be documented on the Notification screen. If the only case action is to document the invalid report, the case will be "Closed" on the Case Info Screen once the notification is mailed.

25.9. Reports That Address the General Conditions of a Facility

Reports/complaints addressing the general conditions of a facility that are not specific to a resident(s) (e.g., food choices, building maintenance issues, etc.) are not appropriate for an APS investigation. Upon determining that the report is of a general nature, the local department must refer the person making the report to the appropriate regulatory and/or licensing authority. (See Appendix N, "DIRECTORY OF AGENCIES/PROGRAMS," for contact information.) The APS worker should also promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The written summary should state the reason an APS investigation will not be conducted. The form in Appendix O, "REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES," may be used to provide the written statement.

26. RESPONSIBILITY OF THE APS WORKER

Valid reports alleging that residents of long-term care facilities, acute care facilities, and other group care facilities are abused, neglected or exploited or at risk of abuse, neglect or exploitation shall be investigated by the local department. Local departments have the same responsibility for investigating, determining the need for protective services, and providing and/or arranging the needed services for all residents of long-term care and acute care facilities and other group care facilities as they have for adults in other living arrangements with the exception of state correctional facilities. The responsibility to investigate shall not be

delegated to other investigatory authorities. However, joint investigations, when appropriate, are encouraged.

27. COORDINATION WITH INVESTIGATORS WITH RELATED RESPONSIBILITIES

The receipt, investigation, disposition, and provision of protective services in response to reports of suspected abuse, neglect or exploitation is closely aligned with the authority/responsibilities of state organizations with regulatory functions and statutory authority to provide services to a targeted population.

In an investigation in a facility for which there is not a state regulatory authority, such as in schools, the APS worker may ask the facility administrator or school superintendent to designate a staff person to assist in the investigation

- 1) When a valid APS report is received on a resident of a long-term care or acute care facility or other group care facility, the APS worker shall determine whether it is appropriate to ask other agencies or programs with regulatory or statutory responsibility for investigations to participate in a joint investigation. In all cases, the APS worker shall notify the appropriate agencies or programs that a report has been received concerning a resident in a regulated facility.
- 2) It is appropriate to give other agencies and programs an opportunity to participate in a joint investigation when such agency or program has regulatory or statutory authority that is compatible with the local department's responsibility to provide protective services to incapacitated and/or older adults.
- 3) If staff from other agencies or programs are not available to participate in a joint investigation within the timeframe that APS must initiate the investigation, the APS investigation shall not be delayed.

28. INVESTIGATORS WITH REGULATORY OR STATUTORY AUTHORITY

For current contact information, including telephone numbers and addresses of investigators with regulatory or statutory authority, see Appendix N, "DIRECTORY OF AGENCIES/PROGRAMS."

28.1. The Department of Social Services, Division of Licensing Programs

The licensing authority is located in the area serving each local department. The Division of Licensing Programs has regulatory authority for assisted living facilities and adult day care centers. The Division of Licensing Programs staff should be given the opportunity to participate when the suspected abuse, neglect or exploitation is alleged to have occurred in a licensed assisted living facility or a licensed adult day care facility.

28.2. The Department of Health, Office of Licensure and Certification

The Office of Licensure and Certification (OLC), a division of the Virginia Department of Health, is located in Richmond. This office has regulatory authority for nursing facilities, acute care hospitals, hospices, and home health care organizations. OLC staff is not

generally available for joint investigations. However, OLC must be advised when an APS report has been received on an adult in a facility licensed by OLC, and informed that the report will be investigated.

28.3. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS)

The DMHMRSAS Office of Licensure, based in Richmond, has satellite offices located at state-operated facilities around the state. The office has licensure authority for any non-state operated hospital, facility, or institution that provides care or treatment for adults with mental illness, mental retardation, or substance abuse problems. When suspected abuse, neglect or exploitation is alleged to have occurred in a facility licensed by this office, the Office of Licensure should be given the opportunity to participate.

The Office of Human Rights is located in Richmond with Human Rights Advocates located in communities and in each state facility. The advocate acts as the representative of residents whose rights are alleged to have been violated. The advocate also investigates conditions or practices that may interfere with the free exercise of residents' rights. When suspected abuse, neglect or exploitation is alleged to have occurred in a state-operated facility or program, the Office of Human Rights should be given the opportunity to participate. Human Rights Advocates are available throughout the state and can be reached through the state hospitals and other state programs.

28.4. The Office of the State Long-Term Care Ombudsman

The Office of the State Long-Term Care Ombudsman is located within the Virginia Association of Area Agencies on Aging. In addition to the State Ombudsman, sub-state programs are located in some, but not all, area agencies on aging throughout the state. The long-term care ombudsman serves as an advocate for older adults who receive long-term care services and works to resolve complaints made by or on behalf of those older adults. When suspected abuse, neglect or exploitation is alleged to have occurred in a licensed nursing facility or licensed assisted living facility, the long-term care ombudsman should be provided the opportunity to participate.

28.5. The Virginia Office for Protection and Advocacy (VOPA)

The Virginia Office for Protection and Advocacy was established as an independent state agency replacing the Department for Rights of Virginians with Disabilities. VOPA is authorized to receive and investigate complaints for the purpose of resolving complaints regarding any activity, practice, policy, or procedure in institutional settings that adversely affects the health, safety, welfare, civil or human rights of any person with mental, cognitive, sensory, or physical disabilities. VOPA has the option of working in collaboration with the state system (APS) or, if the circumstances warrant, may investigate alone. VOPA should be informed when the report of suspected abuse, neglect or exploitation specifies an adult in an institutional setting who has mental, cognitive, sensory, or physical disabilities.

28.6. The Department of Health Professions (DHP)

The Department of Health Professions is located in Richmond and receives and investigates complaints made against regulated health care professionals (e.g., nursing facility administrators, physicians, nurses, nurse aides, and pharmacists). When a report alleges abuse, neglect or exploitation by a regulated health care professional, DHP should be notified and informed that the report will be investigated.

28.7. Office of the Attorney General, Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit is located in Richmond. The unit investigates and prosecutes violations of Medicare and Medicaid laws and regulations. The unit may investigate and prosecute violations of the APS section of the *Code of Virginia* as part of its overall prosecutions.

28.8. Local Law Enforcement

Local departments shall immediately notify the local law-enforcement department where the adult resides, or where the alleged abuse, neglect or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect or exploitation was discovered, when in receipt of a report describing any of the following:

- 1) Sexual abuse as defined in §18.2-67.10;
- 2) Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or
- 3) Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm (*Code of Virginia*, § 63.2-1605).

29. INFORMATION SHARING

See Volume VII, Section I, Chapter C, for general policy on confidentiality. That policy applies to all APS cases. Policy found in Section 38 of this chapter also applies to APS cases and should be used in conjunction with Volume VII, Section I, Chapter C.

29.1. Information Sharing for the Purposes of Coordinating a Joint Investigation

When a joint investigation is appropriate, team members should review their respective needs for information and determine whether these needs coincide and can be met with joint interviews or with information sharing.

The following information relative to the report to be investigated may be shared with other members of the investigatory team for the purpose of coordinating a joint investigation (See Section 38):

- 1) Name, address, age, race, and gender of the adult who is the subject of the report;

- 2) Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect or exploitation, if this person's identity is known;
- 3) Description of suspected incident(s) of abuse, neglect or exploitation; and
- 4) Description of any alleged medical (physical and/or mental/cognitive) problems of the adult who is the subject of the report.

29.2. Disclosure of the Identity of the Reporter

THE IDENTITY OF THE PERSON WHO REPORTED THE SUSPECTED ABUSE, NEGLECT OR EXPLOITATION SHALL BE HELD CONFIDENTIAL UNLESS THE REPORTER AUTHORIZES THE DISCLOSURE OF HIS IDENTITY OR DISCLOSURE IS ORDERED BY THE COURT (22 VAC 40-740-50).

The identity of the person who reported the suspected abuse, neglect or exploitation may be disclosed if the reporter authorizes the disclosure of his/her identity or disclosure is ordered by the Court. If the report is in regard to a resident in a long-term care facility, an acute care facility, or other group care facility, the worker taking the report should ask the reporter for oral or written consent to release the reporter's name to a representative from the appropriate regulatory authority so direct contact with the reporter can be made by the representative. Oral consent shall be documented on the Report screen in ASAP. Written consent will be maintained in the client's record. If the reporter does not agree to release his/her identifying information, the APS worker may not release it unless ordered by the Court.

29.3. Information Sharing when a Joint Investigation Is Not Planned

When agencies with legitimate interest in confidential information, as specified in Section 38.1 of this chapter, are not participants in a joint investigation, the information specified at Section 38.4.1 of this chapter may be shared during the planning phase of the investigation.

29.4. Assurances that Information Will Be Held Confidential

The APS worker shall obtain assurances according to Sections 38.4.2 and 38.4.3 of this chapter that the persons/agencies identified in Sections 38.1 and 38.2 of this chapter who receive confidential information will protect the information. State-level agreements pursuant to Section 38.4.3 are in effect with:

- 1) Department for the Aging;
- 2) Department of Mental Health, Mental Retardation and Substance Abuse Services;
- 3) Department for the Blind and Vision Impaired;
- 4) Department of Health;
- 5) Department of Health Professions;
- 6) DSS Division of Licensing Programs; and

- 7) Department of Medical Assistance Services (DMAS).

When sharing confidential information with representatives of these programs, additional assurances are not necessary.

29.5. Confidential Information Collected by the Investigatory Team

Information collected by the investigatory team should be considered as information that belongs to the team and treated as confidential by all members of the team.

29.6. Confidential Information Not Collected by the Investigatory Team

Information that is maintained in APS records and not included in information collected by the investigatory team shall be shared according to APS policy outlined in Section 38 of this chapter.

30. PREPARING FOR THE INVESTIGATION

The APS worker and other members of an investigatory team should review the available information thoroughly to familiarize themselves with the allegations and supporting facts.

30.1. Availability of Records

Any person who is required to report suspected abuse, neglect or exploitation to the local department is also required to make available to the APS worker any records and/or reports that document the basis for the report. Mandated reporters are required to make pertinent records and reports available without regard to who reported the alleged abuse, neglect or exploitation.

Federal regulations at §164.512 for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorizes covered entities to disclose health information that 'is required by law and disclosure complies with and is limited to the relevant requirements of the law.'

All providers of medical services are also authorized to disclose records of a patient to APS under the *Code of Virginia*, § 32.1-127.1:03.D.6 (Health Records Privacy).

30.2. Sources of Information Available within a Facility

The following sources of information about a resident are generally available within a facility and may be useful in documenting the alleged abuse, neglect or exploitation:

- 1) Admission records
- 2) Emergency Room (ER) records
- 3) Dietary records
- 4) Medical records

- 5) Nurses' notes
- 6) Therapy records
- 7) Physicians' orders
- 8) Medication charts
- 9) Staff time sheets
- 10) Psychosocial records
- 11) Minimum Data Set (MDS)
- 12) Incident reports
- 13) Adult's financial records
- 14) Individual Service Plans (ISPs)
- 15) Lab and X-ray reports

30.3. DMHMRSAS Incident Reports

Incident reports in DMHMRSAS facilities are confidential and are filed separately from the medical record. While an APS worker may be permitted access to review the incident reports, such reports may not be copied and added to the case record. Neither the incident reports nor references to the incident reports may become a part of the APS case record. Such reports are protected from subpoena by the *Code of Virginia*, § 8.01-581.16 & 17 (Virginia Peer Review Act).

31. PERSONS TO BE INFORMED WHEN A REPORT IN A FACILITY WILL BE INVESTIGATED

31.1. Facility Administrator/Director/Superintendent/Person in Charge

Before entering a facility to investigate, the APS worker must make a good faith effort to contact the facility administrator, director, superintendent or other person in charge to inform him/her that a report has been received and request his/her cooperation with the investigation. This contact with the facility administrator, director, superintendent, or person in charge may be by telephone prior to the initial on-site visit, or it may be during the initial on-site visit after arriving at the facility, but before initiating the investigation. It is the APS worker's prerogative to decide whether the investigation will be assisted by arriving at the facility unannounced or by a prior telephone call to the facility.

Without prior contact with the facility administrator, director, superintendent, or person in charge, the APS worker may initiate the investigation without entering the facility (e.g., interview residents of an assisted living facility at a sheltered workshop or other locations; interview facility staff in their homes; interview students or school personnel in their homes.)

31.2. When The Person In Charge Can Not Be Located

When an APS worker arrives at a facility to investigate a report/complaint and no person on the premises is in charge, the APS worker should take reasonable steps to locate a person in charge to notify him/her of the APS worker's presence in the facility and the purpose of the visit. If reasonable efforts to locate a person in charge are unsuccessful,

the APS worker should initiate the investigation, and document that no person was in charge at the facility.

31.3. Notification When No Person Is In Charge

When an APS worker finds no person in charge at a facility, the appropriate licensing authority should be immediately notified of this finding.

31.4. Legally Appointed Guardians/Conservators

If the adult, who is alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation has a legally appointed guardian and/or conservator, that person(s) should be notified that a valid APS report has been received and will be investigated.

If the legally appointed guardian and/or conservator is also the alleged perpetrator, the APS worker should notify him/her of the report and relate to him/her according to guidelines at Section 17.1 of this chapter.

31.5. Responsible Person

When an adult resident of or participant in a facility covered under this Section has designated a person to receive information on his/her behalf or to be notified in case of injury, that person may be informed that a report has been received and will be investigated.

If the person designated by the resident to receive information is the alleged perpetrator, the APS worker should notify him/her of the report and relate to him/her according to guidelines at Section 17.1 of this chapter.

32. INVESTIGATION

The APS worker shall arrange for a private face-to-face interview with the alleged victim of abuse, neglect or exploitation. If the private interview does not occur, reasons must be documented in the Assessment section on the Investigation screen in ASAPS.

The APS worker shall arrange for private interviews, when appropriate, with facility staff. Such interviews should occur in non-resident areas of the facility. If the facility management refuses to allow private interviews with staff, the APS worker shall arrange for private interviews with staff at some location other than the facility.

The APS worker shall arrange for private interviews, as appropriate, with residents, the alleged perpetrator, available witnesses, and other persons having knowledge of the facts of the particular case. Nursing facilities are prohibited by *Code of Virginia*, § 32.1-138.4, from retaliating or discriminating against any person who cooperates with an agency having responsibility for protecting the rights of patients of nursing facilities. Hospitals are prohibited by *Code of Virginia*, §32.1-125.4, from retaliating or

discriminating against any person who cooperates with an agency having responsibility for protecting the rights of patients of hospitals. Assisted living facilities and adult day care centers have the same prohibitions under the *Code of Virginia*, §§ 63.2-1730 and 63.2-1731.

If the local department investigates independently and not in conjunction with an investigatory team, the APS worker should review all records, reports, and other documentation as appropriate; interview all appropriate persons; and prepare a report of the findings. The Investigation screen in ASAPS may be used for this report. The APS Report form can be printed from ASAPS (See ASAPS User's Manual).

If the investigation is a team effort, the APS worker, as a team member, shall participate in planning for and implementation of the review of all pertinent information and the interviewing of all persons who can reasonably be expected to have knowledge of the facts of the case.

33. DISPOSITION AND DOCUMENTATION

At the conclusion of the investigation, the APS worker:

- 1) Makes a disposition. If the APS worker makes a disposition that varies or is in conflict with the findings of other members of the investigatory team, he/she shall document the differences in the APS assessment narrative;
- 2) Completes the Investigation screen in ASAPS;
- 3) Records appropriate information in ASAPS;
- 4) Prepares a written report of findings. The letter to a facility or others may serve as the written report. The worker should specify whether the report is an department or team report. If it is a team report, the worker identifies what agencies/ programs participated on the team. This report should include only the specific confidential information that may be disclosed as outlined in Section 38.4.1 of this chapter. This report may be shared with agencies/ persons with a legitimate interest as specified in Sections 38.1 and 38.2 of this chapter.

34. NOTIFICATIONS / REPORTS

34.1. Notifications

The APS worker notifies, in writing, the following persons regarding findings of investigations conducted in facilities:

- 1) Long-term care and group care facility administrators, directors, and superintendents;
- 2) Acute-care hospital administrators;
- 3) Administrators and/or owners of group care facilities (e.g., nursing facilities, assisted living facilities, facilities operated by DMHMRSAS);
- 4) Superintendents of school systems;

- 5) The adult's legally appointed guardian, conservator or authorized representative; and
- 6) The person who made the report.

The person who made the initial report shall be notified according to procedures in Section 17 of this chapter.

34.2. Reports

The APS worker sends a report as follows:

- 1) The appropriate Adult Services Specialist must be notified by email of the completion of the investigation. The email should provide the ASAPS case number and the adult's name. The Adult Services Specialist will review the case on-line through ASAPS.
- 2) The Investigatory Team must receive a copy of the written report of the APS worker's findings when members of the investigation team reach different conclusions regarding the disposition.
- 3) Regulatory or statutory agencies/programs must receive relevant information except the identity of the reporter unless the release is authorized by the reporter, as specified in Section 38.4.1 of this chapter.

35. IDENTIFICATION OF SERVICE NEEDS AND SERVICE PLANNING

When the investigation finds that the adult needs protective services as described at Section 15.3 of this chapter, a service plan shall be developed. When other agencies/facilities will participate in implementing the service plan, the plan must specify what each participant agrees to do to eliminate or reduce the risk of abuse, neglect or exploitation. If the service plan must be developed without the consensus of all concerned, points of disagreement must be noted.

While services are being identified and the service plan developed, the APS worker should be aware that deficiencies in licensure and certification requirements should be assessed by the appropriate regulatory staff. The authority to cite non-compliance with licensure or certification requirements rests with the appropriate regulatory agency. Likewise, the APS worker does not make recommendations about the continued employment of staff by a facility.

36. MONITORING AND FOLLOW-UP

The APS worker must make follow-up contacts and take other appropriate action, as needed, in cases with "needs protective services" disposition until the service plan goals have been met and the adult is no longer at risk of abuse, neglect or exploitation.

Post-investigative follow-up with the facility to ensure corrective action of regulatory deficiencies is the responsibility of the regulatory authority and the facility administration or, in public schools, the local school board.

If the facility administrator, local school board, and/or the appropriate regulatory authority do not agree with the findings of the APS investigation and indicate that action will not be taken to protect the adult, the APS worker shall consult with the adult, appropriate family members, a legally appointed guardian, and/or other persons with a legitimate interest in the well-being of the adult to discuss options to assure that the adult is protected.

37. CONFIDENTIALITY

The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§2.2-3700), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies (*Code of Virginia*, § 63.2-1605).

CRIMINAL INVESTIGATIVE REPORTS RECEIVED FROM LAW-ENFORCEMENT AGENCIES SHALL NOT BE FURTHER DISSEMINATED BY THE INVESTIGATING AGENCY NOR SHALL THEY BE SUBJECT TO PUBLIC DISCLOSURE (*Code of Virginia*, § 63.2-1606).

See Volume VII, Section I, Chapter C for general policy on confidentiality. That policy applies to all APS cases. The following language also applies to APS cases and should be used in conjunction with Volume VII, Section I, Chapter C:

APS records are confidential and are not subject to the Virginia Freedom of Information Act except that such information shall be disclosed to agencies when THEY HAVE A LEGITIMATE INTEREST IN CONFIDENTIAL INFORMATION WHEN SUCH INFORMATION IS RELEVANT AND REASONABLY NECESSARY FOR THE FULFILLMENT OF THEIR LICENSING, REGULATORY AND LEGAL RESPONSIBILITIES (22 VAC 40-740-50).

38. RELEASE OF INFORMATION

Agencies and/or individuals receiving confidential information shall provide the local department with assurances that the information will be held confidential.

Exception: Such assurances are not required of:

- 1) Department staff who shall have regular access to APS records maintained by local departments;

- 2) An attorney representing a local department of social services in an APS case; and
- 3) Collaterals contacted as part of the investigation.

38.1. Agencies with a Legitimate Interest in Confidential Information

THE FOLLOWING AGENCIES HAVE LICENSING, REGULATORY AND LEGAL AUTHORITY FOR ADMINISTRATIVE ACTION OR CRIMINAL INVESTIGATIONS:

- 1) DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES;
- 2) VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY;
- 3) OFFICE OF THE ATTORNEY GENERAL, INCLUDING THE MEDICAID FRAUD CONTROL PROGRAM;
- 4) DEPARTMENT FOR THE AGING;
- 5) DEPARTMENT OF HEALTH, INCLUDING THE OFFICE OF LICENSURE AND CERTIFICATION AND THE OFFICE OF THE CHIEF MEDICAL EXAMINER;
- 6) DEPARTMENT OF MEDICAL ASSISTANCE SERVICES;
- 7) DEPARTMENT OF HEALTH PROFESSIONS;
- 8) DEPARTMENT FOR THE BLIND AND VISION IMPAIRED;
- 9) DEPARTMENT OF SOCIAL SERVICES, INCLUDING THE DIVISION OF LICENSING PROGRAMS; AND
- 10) THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN AND LOCAL OMBUDSMAN;
- 11) LAW-ENFORCEMENT AGENCIES;
- 12) MEDICAL EXAMINERS;
- 13) ADULT FATALITY REVIEW TEAMS;
- 14) PROSECUTORS; AND
- 15) ANY OTHER ENTITY DEEMED APPROPRIATE BY THE COMMISSIONER OR LOCAL DEPARTMENT DIRECTOR THAT DEMONSTRATES A LEGITIMATE INTEREST (22 VAC 40-740-50).

38.2. Persons/Agencies with Legitimate Interest

LOCAL DEPARTMENTS MAY RELEASE INFORMATION TO THE FOLLOWING PERSONS WHEN THE LOCAL DEPARTMENT HAS DETERMINED THE PERSON MAKING THE REQUEST HAS LEGITIMATE INTEREST IN ACCORDANCE WITH §63.2-104 AND THE RELEASE OF INFORMATION IS IN THE BEST INTEREST OF THE ADULT:

- 1) REPRESENTATIVES OF PUBLIC AND PRIVATE AGENCIES INCLUDING COMMUNITY SERVICES BOARDS, AREA AGENCIES ON AGING AND LOCAL HEALTH DEPARTMENTS REQUESTING DISCLOSURE WHEN THE AGENCY HAS LEGITIMATE INTEREST;
- 2) A PHYSICIAN WHO IS TREATING AN ADULT WHOM HE REASONABLY SUSPECTS IS ABUSED, NEGLECTED OR EXPLOITED;

- 3) THE ADULT'S LEGALLY APPOINTED GUARDIAN OR CONSERVATOR;
- 4) A GUARDIAN AD LITEM WHO HAS BEEN APPOINTED FOR AN ADULT WHO IS THE SUBJECT OF AN ADULT PROTECTIVE SERVICES REPORT;
- 5) A FAMILY MEMBER WHO IS RESPONSIBLE FOR THE WELFARE OF AN ADULT WHO IS THE SUBJECT OF AN ADULT PROTECTIVE SERVICES REPORT;
- 6) AN ATTORNEY REPRESENTING A LOCAL DEPARTMENT IN AN ADULT PROTECTIVE SERVICES CASE;
- 7) THE SOCIAL SECURITY ADMINISTRATION; OR
- 8) ANY OTHER ENTITY THAT DEMONSTRATES TO THE COMMISSIONER OR LOCAL DEPARTMENT DIRECTOR THAT LEGITIMATE INTEREST IS EVIDENT (22 VAC 40-740-50).

38.3. Circumstances Mandating Disclosure of Confidential Information

38.3.1. When Disclosure Is Ordered by the Court

If a subpoena is issued for an APS case record or for department representatives to testify in connection with an investigation or proceedings not directly related to the purpose for which the information in the record was collected and maintained, the worker needs to notify the attorney who represents the department. The attorney will advise the Court of the federal and state laws and regulations pertaining to confidentiality and request the Court to no longer require disclosure of such information. If the Court continues to order disclosure, the department must comply.

38.3.2. Disclosure to Reporter

When a person has made an APS report and an investigation has been completed, the person who made the report shall be notified that the investigation has been completed and appropriate actions have been taken by the department. See Appendices C-1, C-2, C-3, and C-4 for copies of these sample letters.

38.4. Request for Private Information

WHEN A REQUEST FOR ACCESS TO INFORMATION IS MADE PURSUANT TO THE GOVERNMENT DATA COLLECTION AND DISSEMINATION PRACTICES ACT, § 2.2-3800 (The Privacy Protection Act) OF THE *Code of Virginia* (22 VAC 40-740-50).

Any individual, including perpetrators of abuse, neglect and exploitation, has the right to review and challenge personal information only about himself/herself contained in an

APS case record. The individual has a right to review personal information about himself/herself only and may not review other information contained in the case record. The name of the reporter is not disclosed. The individual has a right to challenge, correct, or explain information about himself/herself maintained in the APS record. The individual may file a statement of not more than 200 words setting forth his/her position according to procedures set forth in the *Code of Virginia*, § 2.2-3806.

38.4.1. Specific Confidential Information That May Be Disclosed

The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorized the disclosure of his/her identity or disclosure is ordered by the Court.

Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in Section 38.1 and 38.2 of this chapter:

- 1) NAME, ADDRESS, AGE, RACE, AND GENDER OF THE ADULT WHO IS THE SUBJECT OF THE REQUEST FOR INFORMATION;
- 2) NAME, ADDRESS, AGE, RACE, AND GENDER OF THE PERSON WHO IS ALLEGED TO HAVE PERPETRATED THE ABUSE, NEGLECT OR EXPLOITATION;
- 3) DESCRIPTION OF THE INCIDENT(S) OF ABUSE, NEGLECT OR EXPLOITATION;
- 4) DESCRIPTION OF MEDICAL PROBLEMS TO THE EXTENT KNOWN;
- 5) DISPOSITION OF THE ADULT PROTECTIVE SERVICES REPORT;
AND
- 6) THE PROTECTIVE SERVICE NEEDS OF THE ADULT (22 VAC 40-740-50).

38.4.2. Assurances to Local Departments

Agencies or persons who receive confidential information pursuant to Sections 38.1 and 38.2 of this chapter shall provide the following assurances to the local department:

THE PURPOSE FOR WHICH INFORMATION IS REQUESTED IS RELATED TO THE ADULT PROTECTIVE SERVICES GOAL IN THE SERVICE PLAN FOR THE ADULT;

THE INFORMATION WILL BE USED ONLY FOR THE PURPOSE FOR WHICH IT IS MADE AVAILABLE; AND

THE INFORMATION WILL BE HELD CONFIDENTIAL BY THE DEPARTMENT OR INDIVIDUAL RECEIVING THE INFORMATION EXCEPT TO THE EXTENT THAT DISCLOSURE IS REQUIRED BY LAW (22 VAC 40-740-50).

38.4.3. Methods of Obtaining Assurances

Any one of the following methods may be used to obtain assurances required in Section 38.4.2 of this chapter:

- 1) The use of Form 032-01-040/2 (Confidentiality Form) when the form has been completed and signed by the adult giving permission to share the information requested with the individual or organization making the request;
- 2) AGREEMENTS BETWEEN LOCAL DEPARTMENTS AND OTHER COMMUNITY SERVICE AGENCIES THAT PROVIDE BLANKET ASSURANCES REQUIRED IN Section 38.4.2 of this chapter FOR ALL ADULT PROTECTIVE SERVICES CASES (see Appendix Q, "LETTER OF UNDERSTANDING");
- 3) STATE-LEVEL AGREEMENTS THAT PROVIDE BLANKET ASSURANCES REQUIRED in Section 38.4.2 of this chapter FOR ALL ADULT PROTECTIVE SERVICES CASES (22 VAC 40-740-50);
- 4) The use of Form 032-02-702, "Assurances of Confidentiality" (See Appendix P-1).

38.4.4. Notification That Information Has Been Disclosed

WHEN INFORMATION HAS BEEN DISCLOSED, NOTICE OF THE DISCLOSURE SHALL BE GIVEN TO THE ADULT WHO IS THE SUBJECT OF THE INFORMATION OR TO HIS LEGALLY APPOINTED GUARDIAN. IF THE ADULT HAS GIVEN PERMISSION TO RELEASE THE INFORMATION, FURTHER NOTIFICATION SHALL NOT BE REQUIRED (22 VAC 40-740-50).

Notice to the adult is not required when information is shared with collateral sources to elicit information essential to the investigation.

APPENDIX A - Adult Protective Services Report Form

"Printable" format from ASAPs showing Report fields

ASAPS

Page 1 of 3

Locality

Date/time of Report

Worker Who Took Call

Assigned Worker

City/County Occurred

Date/time of Response

Client Background

First MI Last Phone Number Social security Number

Street Address Street Address 2 City State Zip

Directions to House

Age Birth Date

Race Gender Marital Status Education Specify:

Date/Time Report Written

Incident Background

Location of Incident

Living Arrangements of Client

Facility Name

Type of *Alleged* Abuse/Neglect/Exploitation (Choose all that Apply)

Self Neglect	Yes	No
Neglect	Yes	No
Physical abuse	Yes	No
Sexual Abuse	Yes	No
Mental abuse	Yes	No
Financial exploitation	Yes	No
Other exploitation	Yes	No

Reporter Background

Anonymous Reporter Yes No Reporter is a Mandated Reporter Yes No

Name of Reporter Telephone Number Relationship/Title

ASAPS

Page 2 of 3

Street Address	Street Address 2	City	State	Zip
Print Reporter info? Rights of reporter Explained				
Yes	No	Immunity	Yes	No
		Identity Protection	Yes	No
		Required to provide relevant info to APS worker	Yes	No
Reporter Agrees to disclose identity to...				
Other Investigators			Yes	No
Client			Yes	No
Client's Legal Representative			Yes	No

Interested persons/Agencies**Alleged Perpetrators****Medical information**

Physicians

Description of Medical Problems

Reporter Description of Situation

Describe incapacity of the alleged victim

Circumstances that describe the Abuse/Neglect/Exploitation of the adult

Initiation Decision

Review as Reported

Is there imminent danger to the adult?	Yes	No
Is the abuse, neglect or exploitation severe?	Yes	No
Are there circumstances surrounding the alleged abuse, neglect or exploitation?	Yes	No
Is the physical and mental condition of the adult affected?	Yes	No

Emergency Yes No

Alleged Victim's Income, other resources if known

Previous Founded Incident Involving Client Yes No

Determine report validation (Check all that apply)

Living Identifiable Adult	Yes	No
60 years of age or older	Yes	No
Incapacitated adult	Yes	No
Circumstances Describe A/N/E	Yes	No
Agency of Jurisdiction	Yes	No

ASAPS

Page 3 of 3

Report is Valid Yes No If invalid report, choose _____

Case Number APS Case Status Open Closed New

Follow-Up

Face to Face Interview with Client Completed Yes No Face to Face Date

If No, Explain

Name of Collateral Relationship/Title Collateral Contact With**Alleged Perpetrators****Investigation Findings**

Comments:

Type of *Substantiated* Abuse/Neglect/Exploitation (Check all that apply)

Self Neglect	Yes	No
Neglect	Yes	No
Physical abuse	Yes	No
Sexual Abuse	Yes	No
Mental abuse	Yes	No
Financial exploitation	Yes	No
Other exploitation	Yes	No

Disposition Disposition Date

Legal action

Legal Action Needed	Yes	No
Initiated by LDSS	Yes	No

Type of Legal Action Type of Guardian/Conservator

Service Needs Identified

_____	Accepted	Refused	Not Available
_____	Accepted	Refused	Not Available
_____	Accepted	Refused	Not Available
_____	Accepted	Refused	Not Available
_____	Accepted	Refused	Not Available

This was a joint Investigation with _____

Close Report

APPENDIX B - PREPONDERANCE OF EVIDENCE

Evidence is the type of information gathered by the APS worker during an investigation which is used in making the disposition. Evidence may be either direct or circumstantial. **Direct** evidence includes statements by eyewitnesses, statements by experts such as physicians and nurses addressing certain medical conditions or injuries, observations by the APS worker, documents such as nursing notes and bank statements, objects and photographs. **Circumstantial** evidence does not come directly from a witness, the alleged victim or the alleged perpetrator but relies upon inference and presumptions to prove or disprove the allegation of abuse, neglect or exploitation.

In many APS cases, the eyewitness type evidence ("I saw him slap his mother") may not be available or the alleged victim may be confused and disoriented. Developing circumstantial evidence becomes essential in providing the information needed to make the disposition. Prior threats to the alleged victim, previous substantiated incidents of abuse, neglect or exploitation, proximity (an adult child living in the home) and access (a provider of direct care) to the alleged victim, unexplained injuries and unaccounted for funds **may** point to a disposition of "Needs Protective Services", but each piece of information is "**circumstantial**" evidence rather than "**direct**" evidence.

Preponderance of evidence is the greater weight of the evidence required to decide in favor of one side or the other. Effectively, preponderance of evidence is satisfied if there is a greater than 50% chance that an incident occurred. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the **amount** of evidence. As an example, statements of a credible eyewitness could meet this standard over statements made by a person suffering from dementia.

In making a disposition, the APS worker must weigh both the credibility and probability of **all** the available evidence, both direct and circumstantial.

APPENDIX C-1 – Sample Letter to Mandated Reporters (When the Report Is Not Valid)

DATE

NAME of REPORTER

ADDRESS

Dear **NAME of REPORTER**:

This is in response to your report of **REPORT DATE** alleging that **ADULT NAME** may be a victim of abuse, neglect or exploitation. Your report to this department complies with Section 63.2-1606 of the *Code of Virginia* that requires the reporting of suspected abuse, neglect or exploitation of certain adults to the **NAME OF DEPARTMENT**.

The information received by the department does not meet the validity criteria required to initiate an Adult Protective Services investigation. However, if appropriate, other Adult Services or additional referrals will be offered.

Since situations of vulnerable adults can change rapidly, your continued assistance in identifying and referring adults who may be victims of abuse, neglect or exploitation would be appreciated.

Thank you for your report and for your interest in the safety and well-being of vulnerable adults.

Sincerely,

WORKER NAME

Social Worker

Adult Protective Services

APPENDIX C-2 – Sample Letter to Mandated Reporters (When the Report is Unfounded)

DATE

NAME of REPORTER
ADDRESS

Dear NAME of REPORTER:

This is in response to your report of **REPORT DATE** alleging that **ADULT NAME** may be a victim of abuse, neglect or exploitation. Your report to this department complies with Section 63.2-1606 of the *Code of Virginia* that requires the reporting of suspected abuse, neglect or exploitation of certain adults to the **NAME OF DEPARTMENT**.

The investigation has been completed, and at this time, there is not a preponderance of evidence that **ADULT NAME** is in need of protective services. Since situations of vulnerable adults can change rapidly, your continued assistance in identifying and referring adults whom you suspect may be victims of abuse, neglect or exploitation would be appreciated.

Thank you for your report and for your interest in the safety and well-being of vulnerable adults.

Sincerely,

WORKER NAME

Social Worker

Adult Protective Services

APPENDIX C-3 - Sample Letter to Mandated Reporters (When the Report Is Substantiated)

DATE

NAME of REPORTER
ADDRESS

Dear **NAME of REPORTER**:

This is in response to your report of **REPORT DATE** alleging that **ADULT NAME** may be a victim of abuse, neglect or exploitation. Your report to this department complies with Section 63.2-1606 of the *Code of Virginia* that requires the reporting of suspected abuse, neglect or exploitation of certain adults to the **NAME OF DEPARTMENT**.

The investigation has been completed and there is a preponderance of evidence that **ADULT NAME** is in need of protective services. Available and appropriate services will be offered.

Since situations of vulnerable adults can change rapidly, your continued assistance in identifying and referring adults who may be victims of abuse, neglect or exploitation would be appreciated.

Thank you for your report and for your interest in the safety and well-being of vulnerable adults.

Sincerely,

WORKER NAME
Social Worker
Adult Protective Services

APPENDIX C-4 - Sample Letter to Mandated Reporters (When the Need for Protective Services No Longer Exists)

DATE

**NAME of REPORTER
ADDRESS**

Dear **NAME of REPORTER**:

This is in response to your report of **REPORT DATE** alleging that **ADULT NAME** may be a victim of abuse, neglect or exploitation. Your report to this department complies with Section 63.2-1606 of the *Code of Virginia* that requires the reporting of suspected abuse, neglect or exploitation of certain adults to the **NAME OF DEPARTMENT**.

The investigation has been completed. Although there is a preponderance of evidence that **ADULT NAME** was a victim of abuse, neglect or exploitation, the need for protective services no longer exists. Since situations of vulnerable adults can change rapidly, your continued assistance in identifying and referring adults who may be victims of abuse, neglect or exploitation would be appreciated.

Thank you for your report and for your interest in the safety and well-being of vulnerable adults.

Sincerely,

WORKER NAME
Social Worker
Adult Protective Services

APPENDIX D - Sample Notice of Hearing (To Consider Ordering Emergency Services)

VIRGINIA
IN THE CIRCUIT COURT OF THE CITY/COUNTY OF (name of city or county)
IN RE: (name of the adult who will be before the Court).

NOTICE

TO: (name of the adult; notice shall also be given to the adult's spouse, or if none, to his nearest known next of kin)

You are hereby notified that on the ____ day of _____ (month) _____ (year), at the hour of _____ (time of day) or as soon thereafter as may be heard, the _____ (local department of social services that is petitioning) pursuant to Section 63.2-1609 of the *Code of Virginia*, as amended, will petition the Circuit Court of the _____ (city or county) of _____ (city or county) to order emergency protective services for _____ (adult's name) and for the appointment of a temporary guardian.

At the above-mentioned time and place, you may appear and take whatever action you deem advisable to protect your interests in the matter.

By

Attachment: Copy of the Petition

APPENDIX E - Sample Petition for Emergency Protective Services and Appointment of a Temporary Guardian

The undersigned petitioner representing the **(local department of social services)** respectfully represents to the Court as follows:

That _____ **(adult's name)**, an adult _____ **(age of adult)** years of age is a resident of the _____ **(the word "city or county")** of _____ **(city or county)** residing at _____ **(adult's address)** and that _____ **(he/she)** is presently in need of emergency protective services by reason of _____

_____ **(state the nature of the emergency and the nature of the adult's incapacity)** and that the petitioner attempted on _____ **(pertinent dates)** to obtain _____ **(adult's name)** consent for the services and _____

_____ **(state the outcome of the attempts).**

Your petitioner further represents that it is his/her reasonable belief that:

- ☐ **(type of services needed)** services are necessary to improve or correct the conditions creating the emergency; and
- ☐ That hospitalization or a change of residence **("is or is not")** necessary.

WHEREFORE, pursuant to Section 63.2-1609 of the *Code of Virginia*, as amended, your petitioner hereby requests that the Court order emergency adult protective services for **(name of adult)** and that the petitioner be appointed temporary guardian.

Date

Petitioner and Title

Name and Address of Department

State of Virginia,

County of _____ To wit:

_____, whose name is signed to the foregoing petition,
personally appeared before me and made oath that the allegations therein stated are true.

Sworn and subscribed to before me this _____ Day of _____, of the year _____.

Notary Public

My Commission expires _____.

APPENDIX F - Sample Order of Emergency Protective Services

IN THE CIRCUIT COURT OF THE CITY/COUNTY OF (city or county)

IN RE: (name of adult).

ORDER

This matter came to be heard upon the petition of (name, title, and department), asking that the Court order emergency protective services for (name of adult) under Section 63.2-1608 of the *Code of Virginia* as amended and upon proof of service of notice of this proceeding upon the said (name of adult); and upon the evidence taken in open Court respecting said petition and argued.

And it appearing to the Court that the said (name of adult) is:

- ☐ incapacitated; and
- ☐ an emergency exists; and
- ☐ the adult lacks the capacity to consent to receive adult protective services.

The Court doth Adjudge, Order and Decree that emergency protective services (**type of services ordered**) be provided for (name of adult); and that hospitalization or a change of address (**is or is not**) necessary.

Further, the Court orders that the said emergency protective services may be provided only for a period of **15** days. This order may be renewed once for a **5** day period upon showing to this Court that the continuation of this original order is necessary to remove the emergency.

Further, the Court orders that the cost of the proceeding shall be borne by (**the Commonwealth or the adult**); if the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult is not indigent, the cost of the proceeding shall be borne by the **adult**).

ENTERED THIS _____ (**day**) day of _____ (**month**), _____ (**year**).

Judge

APPENDIX G - Protecting Vulnerable Adults Through Guardianship and/or Conservatorship

1. Basis and Purpose

The creation, conduct, and termination of a guardianship or conservatorship is based in the *Code of Virginia*, § 37.2-1000

A guardian/conservator is appointed for a person who has been found by the Court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the person lacks the capacity to make decisions concerning his/her health and well-being. The purpose of the guardianship and/or conservatorship is to protect the incapacitated person or his/her assets from abuse, neglect or exploitation.

2. Types of Protection and Responsibilities

2.1. Guardian

An individual may be appointed to serve as guardian of the adult (i.e., to make decisions about the personal life and affairs of the incapacitated adult). The guardian of the adult may be authorized by the Court to make all personal decisions for the incapacitated adult or may be authorized to make decisions in only those areas specified by the Court. The primary responsibilities of the guardian are to make decisions about where the incapacitated adult will live, how meals and personal care will be provided, and how health care and personal care decisions are made.

2.2. Conservator

An individual may be appointed to serve as conservator of the incapacitated adult's estate (i.e., to manage property, pay bills as they come due and make financial decisions). The primary responsibilities of the conservator are to manage the incapacitated adult's assets. The Court may authorize the conservator to make all property and financial decisions or may limit that authority to certain areas. The conservator must have prior approval from the Court to buy or sell real property. The authority to buy or sell real property may be a part of the original order. If the authority is not a part of the original order and if the conservator needs to buy or sell property, he/she will need to petition the Court for an amended or supplemental order.

2.3. Guardians and Conservators

An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of his/her estate. This individual has authority for both personal and financial decisions and for property management. The Court may appoint two individuals to fulfill these duties by naming one as guardian and the other as conservator.

3. Situations That Indicate Need for a Guardian or Conservator

In Virginia, a Court may appoint a guardian or conservator for the following situations:

- 1) The Court finds that an adult lacks the capacity to meet the essential requirements for his/her health, safety or therapeutic needs without the assistance and protection of a guardian; and/or
- 2) The Court finds that an adult lacks the capacity to manage property or financial affairs or to provide for his/her support or the support of legal dependents without the assistance and protection of a conservator.

4. Determining the Need for a Guardian/Conservator

The petitioning party has the responsibility to present clear and convincing evidence to substantiate the need for the appointment of a guardian/conservator. Evidence generally consists of:

- 1) Medical and/or psychiatric testimony concerning the adult's illness, and his/her inability to handle his/her personal and/or financial affairs;
- 2) Testimony of friends, relatives, social workers, and other professionals concerning self-endangering behavior; and
- 3) An evaluation report of the incapacitated adult that documents the appropriateness and necessity of guardianship/conservatorship. This report is required under *Code of Virginia*, § 37.2-1005.

5. Documenting Incapacity

5.1. Indicators of Incapacity

The *Code of Virginia*, § 37.2-1000, specifies that an adult is incapacitated when he/she is incapable of receiving and evaluating information effectively or responding to people, events, or environments.

5.2. The Comprehensive Evaluation

A REPORT EVALUATING THE CONDITION OF THE RESPONDENT SHALL BE FILED WITH THE COURT AND PROVIDED TO THE GUARDIAN AD LITEM WITHIN A REASONABLE TIME PRIOR TO THE HEARING ON THE PETITION. THE REPORT SHALL BE PREPARED BY ONE OR MORE LICENSED PHYSICIANS OR PSYCHOLOGISTS OR LICENSED PROFESSIONALS SKILLED IN THE ASSESSMENT AND TREATMENT OF THE PHYSICAL OR MENTAL CONDITIONS OF THE RESPONDENT AS ALLEGED IN THE PETITION. IF A REPORT IS NOT AVAILABLE, THE COURT MAY PROCEED TO HOLD THE HEARING WITHOUT THE REPORT FOR GOOD CAUSE SHOWN AND ABSENT OBJECTION BY THE GUARDIAN AD LITEM OR MAY ORDER A REPORT AND DELAY THE HEARING UNTIL THE REPORT IS PREPARED, FILED AND PROVIDED TO THE GUARDIAN AD LITEM. (*Code of Virginia*, § 37.2-1005).

- 5.2.1.** Prior to the guardianship/conservatorship hearing, the Circuit Court requires that one or more licensed physicians, psychologists or licensed professionals skilled in the assessment of the physical or mental conditions alleged prepare a comprehensive evaluation of the current condition of the adult who is alleged to be incapacitated.

The local department of social services may be asked to assist with the portion of the evaluation of which it has knowledge. If the local department is the petitioner, the report must be prepared and ready before going to Court.

- 5.2.2.** The purpose of the report is to inform the Court about the condition of the alleged incapacitated adult. The report shall include the best available information and represent the belief of those who sign the report. It must include the following:

- 1) A description of the nature, type and extent of the adult's incapacity, including the adult's specific functional impairments;
- 2) A diagnosis or assessment of the adult's mental and physical condition, including a statement as to whether the adult is on any medications that may affect his/her actions or demeanor. Where appropriate and consistent with the scope of the evaluator's license, the report should include an evaluation of the adult's ability to learn self-care skills, adaptive behavior and social skills and a prognosis for improvement;
- 3) The date(s) of the examination(s), evaluation(s) and assessment(s) upon which the report is based; and

- 4) The signature of the person conducting the evaluation and the nature of the professional license held by the evaluator.

5.2.3. If the evaluation report is not available, the Court may hold the hearing without the report for good cause shown if the guardian ad litem does not object. The Court, at its discretion, may order a report be prepared and delay the hearing until the report is available.

5.2.4. The cost of the evaluation may be charged as part of the costs of the proceedings at the discretion of the Court.

5.3. The Nature and Extent of the Adult's Alleged Incapacity

The petition shall specify the type of guardianship or conservatorship requested and a brief description of the nature and extent of the adult's alleged incapacity (*Code of Virginia*, § 37.2-1002).

When the petition requests appointment of a guardian, include a brief description of the services currently being provided for the adult's health, care, safety, or rehabilitation. Where appropriate, include a recommendation as to living arrangement and treatment plan. If a limited guardian is requested, include the specific areas of protection and assistance being requested.

If a limited conservator is requested, include the specific areas of management and assistance being requested.

5.4. Documenting the Alleged Incapacitated Adult's Decision-Making Difficulties

The APS worker shall examine all available information concerning the alleged incapacitated adult's decision-making in areas that are critical to the adult. The APS worker should document situations in which the adult has been unable to make decisions in his/her own interest in the following areas:

- 1) Arranging and/or receiving essential health and/or personal care;
- 2) Providing or arranging for nutritional needs;
- 3) Securing and wearing adequate clothing appropriate to the weather;
- 4) Securing adequate and appropriate housing;
- 5) Arranging and maintaining personal safety including safe shelter;
- 6) Management of financial affairs including the use of funds to provide for one's basic needs; and

- 7) Management of his/her estate including both real and personal property.

6. Who Serves as Guardian/Conservator

Every effort should be made to locate the most appropriate guardian/conservator for the alleged incapacitated adult. A family member or close friend may be appropriate to serve as guardian/conservator.

Criteria for determining the appropriateness of a person to serve as guardian/conservator includes: a relationship with the adult alleged to need a guardian/conservator; geographic accessibility to the alleged incapacitated adult; the absence of a conflict of interest; emotional stability; and good physical health of the proposed guardian/conservator.

6.1. Guardians/Conservators Who Are Virginia Residents

An appropriate person who is a resident of the Commonwealth may be appointed and allowed to qualify as guardian/conservator of the alleged incapacitated adult.

6.2. Guardians/Conservators Who Are Non-Residents

A non-resident adult parent, brother, sister, spouse, child, or other adult descendant of an adult adjudged incapacitated or any combination thereof, may be appointed and allowed to qualify as guardian/conservator of an incapacitated adult. At the time of qualification, a non-resident guardian/conservator must file with the Clerk of the Circuit Court his/her consent in writing that service of process in any action or proceeding against him/her as fiduciary, or any other notice with respect to the administration of the estate, trust or person in his/her charge in the Commonwealth, may be by service upon the Clerk of the Circuit Court in which he/she is qualified or upon a resident of the Commonwealth and at the address that he/she specifies in the written instrument (*Code of Virginia*, § 26-59).

7. Eligibility for Public Guardian or Conservator

THE CIRCUIT COURT MAY APPOINT A LOCAL OR REGIONAL PROGRAM AUTHORIZED BY THE DEPARTMENT FOR THE AGING PURSUANT TO ARTICLE 2 (§ 2.2-711) OF CHAPTER 7 OF TITLE 2.2 AS THE GUARDIAN OR CONSERVATOR FOR ANY RESIDENT OF THE COMMONWEALTH WHO IS FOUND TO BE INCAPACITATED IF THE COURT FINDS THAT:

- (I) THE INCAPACITATED PERSON'S RESOURCES ARE INSUFFICIENT TO FULLY COMPENSATE A PRIVATE GUARDIAN AND PAY COURT COSTS AND FEES ASSOCIATED WITH THE APPOINTMENT PROCEEDING AND

- (II) THERE IS NO OTHER PROPER AND SUITABLE PERSON WILLING AND ABLE TO SERVE IN SUCH CAPACITY.

THE GUIDELINES FOR DETERMINING INDIGENCY SET FORTH IN § 19.2-159 SHALL BE USED BY THE COURT IN DETERMINING THE SUFFICIENCY OF THE RESPONDENT'S ESTATE. IF THE RESPONDENT WOULD BE ELIGIBLE FOR THE APPOINTMENT OF COUNSEL PURSUANT TO § 19.2-159, HE SHALL BE ELIGIBLE FOR THE APPOINTMENT OF A PUBLIC GUARDIAN OR CONSERVATOR PURSUANT TO THIS SECTION (*Code of Virginia*, § 37.2-1010).

8. When the Incapacitated Subject of the Petition Is Indigent

When the incapacitated adult who is the subject of the guardianship petition is indigent, any fees and costs of the proceedings shall be borne by the Commonwealth.

The guidelines for determining indigence set forth in *Code of Virginia*, § 19.2-159, shall be used by the Court in determining the sufficiency of the incapacitated adult's estate. If the incapacitated adult would be eligible for the appointment of counsel pursuant to §19.2-159, he/she shall be eligible for the appointment of a guardian/conservator pursuant to this section.

9. Procedures to Petition for Appointment of a Guardian/Conservator

9.1. Circuit Court in Which Petitions Are to Be Filed

The guardianship/conservatorship petition is to be filed in the Circuit Court of the county or city in which the subject of the petition is a resident or is located or in which the subject of the petition resided immediately prior to becoming a patient/resident in a nursing facility, assisted living facility, state hospital for persons with mental illness or mental retardation, or any other similar facilities. The Circuit Court in which the proceeding is first commenced may order a transfer to another locality if it would be in the best interest of the incapacitated adult.

If the petition is for the appointment of a conservator for a nonresident with property in the state, the petition is to be filed in the city or county in which the alleged incapacitated adult's property is located (*Code of Virginia*, § 37.2-1001).

9.2. Who May File a Petition?

Any interested person may petition the Circuit Court to have a guardian/conservator or both appointed for an alleged incapacitated adult. The petitioner is the person who presents evidence to the Court that the adult is unable to take care of him/herself or his/her financial affairs or both and is, therefore, in need of a guardian/conservator to perform certain duties. The petitioner's attorney files a petition with the Court and is responsible for notifying relatives of the alleged incapacitated adult of the guardianship and/or conservatorship hearing. (*Code of Virginia*, § 37.2-1002).

Petitioners are frequently relatives. It is appropriate for a local department of social services to petition in an adult protective services case when there is no family member or other interested person to file.

If a guardian/conservator is needed to protect the incapacitated adult from abuse, neglect or exploitation, the department attorney should be consulted as a first step in planning for petitioning the Circuit Court for the appointment.

9.3. Information to Include in a Petition

The filing of a guardianship/conservatorship petition with the Clerk of Court constitutes the practice of law and must be done by an attorney. However, APS workers are frequently expected to gather essential information and complete certain paperwork in preparation for the filing. See Appendix H for an example of a petition.

THE PETITION SHALL STATE THE PETITIONER'S NAME, PLACE OF RESIDENCE, POST OFFICE ADDRESS, AND RELATIONSHIP, IF ANY, TO THE RESPONDENT, AND, TO THE EXTENT KNOWN AS OF THE DATE OF FILING, SHALL INCLUDE THE FOLLOWING:

- 1) THE RESPONDENT'S NAME, DATE OF BIRTH, PLACE OF RESIDENCE OR LOCATION, POST OFFICE ADDRESS, AND THE SEALED FILING OF THE SOCIAL SECURITY NUMBER.
- 2) THE NAMES AND POST OFFICE ADDRESSES OF THE RESPONDENT'S SPOUSE, ADULT CHILDREN, PARENTS AND ADULT SIBLINGS OR, IF NO SUCH RELATIVES ARE KNOWN TO THE PETITIONER, AT LEAST THREE OTHER KNOWN RELATIVES OF THE RESPONDENT, INCLUDING STEP-CHILDREN. IF THREE SUCH PERSONS CANNOT BE IDENTIFIED AND LOCATED, THAT FACT SHOULD BE INCLUDED IN THE PETITION.

- 3) THE NAME, PLACE OF RESIDENCE OR LOCATION, AND POST OFFICE ADDRESS OF THE INDIVIDUAL OR FACILITY, IF ANY, THAT IS RESPONSIBLE FOR OR HAS ASSUMED RESPONSIBILITY FOR THE RESPONDENT'S CARE OR CUSTODY.
- 4) THE NAME, PLACE OF RESIDENCE OR LOCATION, AND POST OFFICE ADDRESS OF ANY AGENT DESIGNATED UNDER A DURABLE POWER OF ATTORNEY OR AN ADVANCE DIRECTIVE OF WHICH THE RESPONDENT IS THE PRINCIPAL, OR ANY GUARDIAN, COMMITTEE OR CONSERVATOR CURRENTLY ACTING, WHETHER IN THIS STATE OR ELSEWHERE. THE PETITIONER SHALL ATTACH A COPY OF ANY SUCH DOCUMENT, IF AVAILABLE.
- 5) THE TYPE OF GUARDIANSHIP OR CONSERVATORSHIP REQUESTED AND A BRIEF DESCRIPTION OF THE NATURE AND EXTENT OF THE RESPONDENT'S ALLEGED INCAPACITY.
- 6) WHEN THE PETITION REQUESTS APPOINTMENT OF A GUARDIAN, A BRIEF DESCRIPTION OF THE SERVICES CURRENTLY BEING PROVIDED FOR THE RESPONDENT'S HEALTH, CARE, SAFETY, OR REHABILITATION AND, WHERE APPROPRIATE, A RECOMMENDATION AS TO LIVING ARRANGEMENT AND TREATMENT PLAN.
- 7) IF THE APPOINTMENT OF A LIMITED GUARDIAN IS REQUESTED, THE SPECIFIC AREAS OF PROTECTION AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT SHOULD BE LISTED. IF THE APPOINTMENT OF A LIMITED CONSERVATOR IS REQUESTED, THE SPECIFIC AREAS OF MANAGEMENT AND ASSISTANCE TO BE INCLUDED IN THE ORDER SHOULD BE LISTED.
- 8) THE NAME AND POST OFFICE ADDRESS OF ANY PROPOSED GUARDIAN OR CONSERVATOR OR ANY GUARDIAN OR CONSERVATOR REQUESTED BY THE RESPONDENT, AND THAT PERSON'S RELATIONSHIP TO THE RESPONDENT.
- 9) THE NATIVE LANGUAGE OF THE RESPONDENT'S AND ANY NECESSARY ALTERNATIVE MODE OF COMMUNICATING.
- 10) A STATEMENT OF THE FINANCIAL RESOURCES OF THE RESPONDENT. THAT SHALL, TO THE EXTENT KNOWN, LIST THE APPROXIMATE VALUE OF THE RESPONDENT'S PROPERTY AND THE ANTICIPATED ANNUAL GROSS INCOME OTHER RECEIPTS AND DEBTS.

- 11) A STATEMENT OF WHETHER THE PETITIONER BELIEVES THE RESPONDENT'S ATTENDANCE AT THE HEARING WOULD BE DETRIMENTAL TO HIS/HER HEALTH, CARE OR SAFETY; AND
- 12) A REQUEST FOR APPOINTMENT OF A GUARDIAN AD LITEM (*CODE OF VIRGINIA*, § 37.2-1002).

9.4. Cost of Proceedings Waived or Borne by the Commonwealth

If it is alleged under oath that the estate of the alleged incapacitated adult is unavailable or insufficient to pay the fees and costs of the proceedings, the Court may waive such fees and costs as prescribed by *Code of Virginia*, § 37.2-1008.

When an adult subject of a guardianship and/or conservatorship petition is determined by the Circuit Court to be indigent, any fees and costs of the proceeding that are fixed by the Court or taxed as costs shall be borne by the Commonwealth(*Code of Virginia*, § 37.2-1008). Those fees include the fees for the respondent's attorney and the guardian-ad-litem.

10. Petition for Restoration of Capacity, Modification, Termination of the Guardianship/Conservatorship or Removal of the Guardian/Conservator

Any adult found by the Court to be incapacitated, the guardian/conservator of any adult found by the Court to be incapacitated, or any other person may petition the Court to restore the incapacitated adult's capacity. Likewise, a petition may be filed to request modification of the guardianship/conservatorship, or to terminate, or to order the removal of the guardian/conservator (*Code of Virginia*, § 37.2-1012).

If the petition is for modification to expand the scope of the guardianship/conservatorship, notice of the hearing and a copy of the petition shall be personally served on the incapacitated adult and mailed to other persons entitled to notice. The Court shall appoint a guardian ad litem for the incapacitated adult and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated adult.

Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated adult and that:

- 1) The incapacitated adult is no longer in need of the assistance or protection of a guardian/conservator;

- 2) The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the incapacitated adult's current need;
- 3) The incapacitated adult's understanding or capacity to manage the estate and financial affairs or to provide for his/her health, care or safety has so changed as to warrant the proposed action; or
- 4) Circumstances are such that the guardianship/conservatorship is no longer necessary or is insufficient.

11. Compensation to Guardian Ad Litem, Attorney, Evaluator Appointed by the Court

The Court may allow reasonable compensation from the estate of the incapacitated adult to any guardian ad litem, attorney, or evaluator appointed by the Court. Any compensation allowed shall be taxed as costs of the proceeding (*Code of Virginia*, § 37.2-1012).

12. Duties and Powers of Guardians

A guardian's relationship to the incapacitated adult for whom he/she was appointed guardian is based on trust. *The guardian stands in a fiduciary relationship to the incapacitated adult.* A guardian may be held personally liable for a breach of trust in his/her performance of duties on behalf of the incapacitated adult. A guardian is not liable for the acts of the incapacitated adult, unless the guardian is personally negligent. A guardian is not required to expend his/her personal funds on behalf of the incapacitated adult.

The guardian's responsibilities to the incapacitated adult include:

- 1) Maintaining sufficient contact with the incapacitated adult to know of his/her capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated adult as often as necessary;
- 2) Seeking prior Court authorization to change the incapacitated adult's residence to another state, to terminate or consent to a termination of the adult's parental rights, or to initiate a change in the adult's marital status;
- 3) To the extent feasible, encouraging the incapacitated adult to participate in decisions, to act on his/her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated adult to the extent known, and shall otherwise act in the adult's best interest and exercise reasonable care, diligence and prudence (*Code of Virginia*, § 37.2-1020); and

- 4) Filing an annual report on the incapacitated adult's condition with the local department of social services for the jurisdiction in which he/she was appointed (*Code of Virginia*, § 37.2-1021).

13. Reasons for Termination of Guardianship

A guardianship shall terminate for any of the following reasons:

- 1) The death of the incapacitated adult;
- 2) The Court orders the termination of the guardianship following a hearing on the petition of any interested person;
- 3) The death, resignation, or removal of the guardian.

14. Guardian Reports Filed With the Local Department of Social Services

When a guardian qualifies before the Clerk of the Circuit Court, the Clerk is required by *Code of Virginia*, § 37.2-1011, to forward a copy of the Order of Appointment to the local department of social services in the jurisdiction where the incapacitated adult resides. The guardian is responsible for filing an annual report on the incapacitated adult's condition with the local department of social services for the jurisdiction in which he/she was appointed

14.1. First Report

Within six months from the date of the guardian's qualification, he/she is required to file the first report on the status of the incapacitated adult with the local department of social services in the jurisdiction where he/she was appointed. This first report addresses the status of the incapacitated adult during the first four months, beginning on the date of qualification of the guardian.

When the incapacitated adult lives outside the Commonwealth of Virginia, the Court that appointed the guardian retains jurisdiction and reports shall continue to be made to the local department of social services in the jurisdiction in which the guardian was appointed.

If the incapacitated adult relocates to or resides in a jurisdiction other than where the guardian was appointed, it is the responsibility of the local department of social services where the guardian was appointed to forward the guardian's report to the local department of social services in the jurisdiction where the incapacitated adult then resides.

All reports filed by the guardian with the local department of social services shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court of Virginia (see Appendix J, "ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON").

The report shall be accompanied by a filing fee of \$5.00 made payable to the local department of social services where the report is submitted.

14.2. Subsequent Guardian Reports

Subsequent guardian reports will be for a period of 12 months. Reports will be due within four months from the last day of the previous 12-month reporting period. Each report shall be accompanied by a filing fee of \$5.00 made payable to the local department of social services in the jurisdiction where the incapacitated adult resides.

14.3. Co-Guardian Reports

When co-guardians are appointed, each co-guardian is required to sign the "Annual Report of Guardian for an Incapacitated Person" form if filing jointly. One filing fee of \$5.00 must accompany the Report signed by co-guardians. Each co-guardian may file a separate Report. Individual co-guardian reports must be accompanied by the \$5.00 filing fee.

14.4. Processing the Guardian Report Filing Fees

The *Code of Virginia*, § 37.2-1021 requires that the guardian report be accompanied by a filing fee of \$5.00. Checks for filing fees should be made payable to the local department of social services. Local departments should report all guardian report filing fees as a receipt to Adult Protective Services, Budget Line 895, Cost Code 89503.

14.5. When the Department or Department Employee Is the Guardian

When the local department of social services or an employee of the local department of social services in the jurisdiction in which the incapacitated adult resides is the guardian, the Order of Guardianship shall be forwarded to a neighboring county or city department of social services and the annual reports shall be made by the guardian to the neighboring department. The local department may contact the appropriate Adult Services Specialist for consultation and assistance in assigning responsibility to another department.

14.6. Referral of Guardian Reports to Another Local Department of Social Services

When a guardian is appointed, the Clerk of the Circuit Court is instructed by *Code of Virginia*, § 37.2-1011, to promptly forward a copy of the order appointing the guardian to the local department of social services in the jurisdiction where the incapacitated adult resides. Guardians are instructed by *Code of Virginia*, § 37.2-1021, to file annual reports with the local department of social services for the jurisdiction in which he/she was appointed. *Code of Virginia*, § 37.2-1021, assigns to the local department of social services receiving the report the responsibility for forwarding the annual report to the local department of social services in the jurisdiction where the incapacitated adult currently resides.

After forwarding the report and a copy of the Order, the local department of social services for the jurisdiction where the guardian was appointed must notify the guardian in writing to send subsequent reports, accompanied by the five dollar filing fee, to the local department of social services for the jurisdiction where the incapacitated adult resides. The written notification to the guardian must provide the name, telephone number, and mailing address of the local department of social services for the jurisdiction.

The local department of social services for the jurisdiction where the incapacitated adult resides is required to follow all policy at Sections 14.7, 14.8, and 14.9.

14.7. Review of Guardian Reports by Local Departments of Social Services

The date the local department received the guardian report should be stamped or noted on the report form. Within 10 calendar days of the receipt of a guardian report, an APS worker should review the report. The review should assess:

- 1) Whether the report has been properly completed in its entirety; and
- 2) Whether the contents of the report provide reason to suspect that the subject of the report is being abused, neglected or exploited or is at risk of abuse, neglect or exploitation. See Appendix K, "GUIDELINES for REVIEW of GUARDIAN'S REPORT."

14.8. Follow-up on the Review of Guardian Reports

- 1) If the review of the guardian report finds the report is incomplete, the guardian should be requested to submit the missing information.

- 2) If it is the judgment of the APS worker that there is reason to suspect that the subject of the report is abused, neglected or exploited or is at risk of abuse, neglect or exploitation, the case should be opened in ASAPS and procedures for documenting the report followed (See ASAPS User's Manual). An investigation should be initiated.
- 3) If the incapacitated adult lives outside the Commonwealth and there is reason to suspect that the subject of the report is abused, neglected or exploited, or is at risk of abuse, neglect or exploitation, the APS worker should make an APS report to the appropriate state, county or city where the incapacitated adult resides.
- 4) If an APS case is opened, a copy of the guardian's report should be filed in the case record.
- 5) If it is the judgment of the APS worker that there is no reason to suspect that the subject of the report is abused, neglected or exploited, or is at risk of abuse, neglect or exploitation, the date of review and the name of the APS worker should be noted and the report filed in a place designated by the department.
- 6) WITHIN 60 DAYS OF THE RECEIPT OF THE ANNUAL REPORT, THE LOCAL DEPARTMENT OF SOCIAL SERVICES SHALL FILE A COPY OF THE REPORT WITH THE CLERK OF THE CIRCUIT COURT THAT APPOINTED THE GUARDIAN, TO BE PLACED WITH THE COURT PAPERS PERTAINING TO THE GUARDIANSHIP CASE (*Code of Virginia*, § 37.2-1021).

14.9. When a Guardian Fails to File a Required Report

If the guardian fails to file a required report within thirty days of its due date, a "Notice of Overdue Guardian Report" may be sent to the guardian (See Appendices L-1 and L-2).

If, after a good faith effort by the local department to obtain the guardian's report, the guardian continues to fail to submit the report within four months from the last day of the reporting period and the well-being of the incapacitated adult is unknown or is in question, the department shall, at its discretion, initiate an APS report and proceed with an investigation.

Twice each year the local department shall file with the appropriate Circuit Court a list of all guardians who are more than ninety days delinquent in filing an annual report (*Code of Virginia*, § 37.2-1021).

14.10. Death of the Incapacitated Adult; Final Report

When the incapacitated adult dies, the guardian must prepare a summary report and include with the report the notice of the incapacitated adult's death. The summary report will be filed with the local department of social services as required by the *Code of Virginia*, § 37.2-1021.

14.11. Maintenance of the Guardian Report Form

When the guardian report has been reviewed by an APS worker, and no further action is needed, the completed report form should be filed in the adult's record (if available) or in a place designated by the department. Guardian report forms are considered documents or reports maintained by APS and are not subject to the Virginia Freedom of Information Act.

14.12. Purging of the Guardian Report Form

Guardian report forms filed with the local department of social services in compliance with *Code of Virginia*, § 37.2-1021 may be purged by the local department after three years upon the completion of a state or federal audit or after five years if there has been no state or federal audit. (See Section 14.8, #6 for the department's requirement for filing copies with the appropriate clerk's office.)

15. General Duties and Liabilities of Conservators

A conservator stands in a fiduciary relationship to the incapacitated adult for whom he/she was appointed conservator and may be held personally liable for a breach of fiduciary duty to the incapacitated adult.

The powers of a conservator shall terminate upon the death of the incapacitated adult or upon the death, resignation, or removal of the conservator or upon the termination of the conservatorship.

The conservator's responsibilities to the incapacitated adult include:

- 1) Acting in the best interest of the incapacitated adult and, to the extent known, considering the incapacitated adult's expressed desires and personal values;
- 2) Caring for and preserving the estate of the incapacitated adult and managing it to the best advantage; applying the income from the estate to the payment of the incapacitated adult's debts including reasonable compensation to the conservator and to any guardian appointed and to the incapacitated adult's legal dependents; and

- 3) Encouraging the incapacitated adult to participate in decisions, to act on his/her own behalf, and to develop or regain capacity to manage the estate and his/her financial affairs (*Code of Virginia*, § 37.2-1022).

16. Accounting Responsibilities of the Conservator

The conservator accounts to the Commissioner of Accounts. At the time of qualification, the Clerk of the Circuit Court will provide the conservator with the name and address of the Commissioner of Accounts.

THE CONSERVATOR SHALL COMPLY WITH AND BE SUBJECT TO THE REQUIREMENTS IMPOSED UPON FIDUCIARIES GENERALLY UNDER TITLE 26, SPECIFICALLY INCLUDING THE DUTY TO ACCOUNT SET FORTH IN § 26-17.4 (*Code of Virginia*, § 37.2-1022).

An accounting is a record of all money, property, and other assets for which the conservator is responsible. The accounting includes a record of money spent, a record of any investments, and a statement of available cash.

The first accounting covers the first four months of the conservatorship and must be filed with the Commissioner of Accounts within six months of qualification. After the initial accounting, other accounts are due annually.

17. Management Powers and Duties of Conservators

A conservator, in managing the estate of an incapacitated adult, has the following powers and duties (*Code of Virginia*, § 37.2-1023):

- 1) To ratify or reject a contract entered into by the incapacitated adult;
- 2) To pay bills for the benefit of the incapacitated adult;
- 3) To maintain life, health, casualty and liability insurance for the benefit of the incapacitated adult or his/her legal dependents;
- 4) To manage the estate following termination of the conservatorship until it is delivered to the incapacitated adult or his/her successors;
- 5) To execute and deliver all documents and to take all other actions that will serve the best interest of the incapacitated adult;
- 6) To initiate a proceeding
 - a. To revoke a power of attorney under the provisions of *Code of Virginia*, § 11-9, or

- b. To claim a share of the estate of a deceased spouse under *Code of Virginia*, § 64.1-13;
- 7) To borrow money as seems advisable and/or to mortgage portions of the incapacitated adult's estate to secure loan(s) or renew existing loan(s).

A report to the local department that the reporter has reason to suspect that the incapacitated adult's funds are misused by the conservator should precede an APS investigation.

APPENDIX H - Sample Petition for Appointment of a Guardian or Conservator (For Informational Purposes Only)

VIRGINIA:

IN THE CIRCUIT COURT OF _____ COUNTY/CITY
IN RE (name of the adult for whom a guardian is sought)

FIDUCIARY NO. _____

PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR

COMES NOW the (**department name**) Department of Social Services (hereinafter “the Department”), pursuant to the *Code of Virginia* § 37.2-1002 and petitions this Honorable Court to appoint a guardian (**and/or conservator**) for (**name of adult**). In support of its Petition, the Department states as follows:

- 1) State the name of the petitioner, place of residence, post office address, and relationship, if any, to the adult for whom a guardian or conservator is sought.
- 2) State the name of the adult for whom a guardian or conservator is sought. Include the adult’s date of birth, place of residence or location, social security number, and post office address.
- 3) Include the names and post office addresses of the adult’s spouse, adult children, parents and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the adult, including step-children. If three such persons cannot be identified and located, the petitioner should so state in the petition.
- 4) State the name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the adult’s care or custody.
- 5) State the name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the adult is the principal. State the name of any guardian, committee, or conservator currently acting, whether in this state or elsewhere. Attach a copy of any such documents if available.

- 6) State the type of guardianship or conservatorship requested. Give a brief description of the nature and extent of the adult's alleged incapacity. When the petition requests appointment of a guardian, give a brief description of the services currently being provided for the adult's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan. If the appointment of a limited guardian is requested, state the specific areas of protection and assistance to be included in the order of appointment. If the appointment of a limited conservator is requested, state the specific areas of management and assistance to be included in the order of appointment.
- 7) State the name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the adult, and that person's relationship to the adult.
- 8) State the native language of the adult and any necessary alternative mode of communication.
- 9) Provide a statement of the financial resources of the adult. The statement shall list, to the extent known, the approximate value of the adult's property and the adult's anticipated annual gross income and other receipts, and debts.
- 10) Include a statement of whether the petitioner believes the adult's attendance at the hearing would be detrimental to the adult's health, care, or safety.

WHEREFORE, your Petitioner prays:

- 1) That **(name of proposed guardian)** be appointed guardian for the said **(insert name of the adult)** under the provisions of § 37.2-1002 of the *Code of Virginia*.
- 2) That a Guardian ad litem be appointed to represent **(name of adult)** in this proceeding.
- 3) That your Petitioner may have such further relief as the Court shall deem just and proper.

Respectfully submitted,

_____**(Name of department)**

BY _____
Counsel **(City/County Attorney)**

STATE OF VIRGINIA
COUNTY/CITY OF _____

Personally appeared before me this _____ day of _____, 20____. _____

(Name of petitioner),

who, after first being duly sworn under oath, deposes and says that the matters contained in the foregoing petition are true to the best of (his/her) knowledge and belief.

Subscribed to and sworn to before me, a Notary Public in and for the City/County of _____.

My Commission Expires: _____

APPENDIX I - Instructions to Newly Appointed Guardians

Court appointed guardians are required under § 37.2-1021 of the *Code of Virginia*, to file an annual report with the local department of social services for the jurisdiction in which he/she was appointed.

The first report to be filed by the guardian is due at the local department of social services within six months from the date of the guardian's qualification and covers the activity performed on behalf of the incapacitated person during the first four months of the guardianship.

After the first report has been filed, reports are due annually. Each report covers a 12 month period from the day the first report was filed and is due within four months of the end of that 12 month period (*Code of Virginia*, §26-17.4).

The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court. The first annual reporting form will be provided by the Clerk of the Court at the time of qualification. Subsequent annual reporting forms will be provided by the local department of social services. The guardian has four months from the end of the reporting period in which to complete the annual report and submit it to the local department of social services. All questions on the form must be answered.

When the guardian or the incapacitated person, either or both, live outside the Commonwealth of Virginia, the Court that appointed the guardian retains jurisdiction and the report shall continue to be made to the local department of social services in the jurisdiction in which the guardian was appointed.

If the incapacitated person dies, the guardian will prepare a summary report and include within the report the notice of the incapacitated person's death. The report will be filed with the local department of social services as required by the *Code of Virginia*, § 37.2-1021.

Incomplete report forms will be returned to the guardian for completion.

The report form shall be accompanied by a \$5.00 filing fee. The fee should be submitted in check form only and the check should be made payable to the local department of social services.

If the guardian is to be compensated for his/her duties as guardian, the rate of compensation may be set in the Court's Order. If compensation is not set in the Court Order, the Commissioner of Accounts will need to approve the amount the conservator pays the guardian.

The guardian will need to make a written request for compensation from the conservator of the incapacitated person's estate. The amount of compensation that is requested should be reported in the section for itemizing "reasonable and necessary expenses" on the "Annual Report of Guardian for an Incapacitated Person" report form.

Twice each year the local department of social services is required under *Code of Virginia*, § 37.2-1021 to file with the Clerk of the Circuit Court a list of all guardians who are more than ninety days delinquent in filing an annual report as required.

Mail the report form and check as follows:

ANNUAL GUARDIAN REPORT

ATTENTION: _____

Department of Social Services

The local department of social services contact person regarding annual guardian reports is _____ . The contact person may be reached by telephone at _____ or by writing _____ .

Guardians and Conservators are Mandated Reporters

The *Code of Virginia*, § 63.2-1606, requires that when Guardians and Conservators suspect that an adult has been abused, neglected or exploited or at risk of abuse, neglect or exploitation, they must immediately report their suspicions to Adult Protective Services of the department of social services in the locality where the incapacitated person resides or to the 24-hour, toll-free APS Hotline at **1-888-832-3858**.

The *Code of Virginia*, § 63.2-100, provides the following definitions:

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

For additional information visit: <http://www.dss.virginia.gov/family/aps.html>.

A Virginia Handbook for Guardians and Conservators: A Practical Guide for Court-Appointed Guardians and Conservators of Adults may be ordered from the Virginia Guardianship Association, Post Office Box 9204, Richmond, VA 23227-9998. Telephone number: 804-261-4046.

APPENDIX J - Annual Report of Guardian for an Incapacitated Person

VA. CODE § 37.2-1021
COMMONWEALTH OF VIRGINIA

ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON			
Name of Incapacitated Person		SSN	
Circuit Court where Guardian was Appointed:		Age	
Circuit Court Case No		Date Appointed	
Guardian's Name			
Guardian's Address			
Guardian's Telephone			
Conservator's Name			
Conservator's Address			
Conservator's Telephone			
Same as Guardian			
The period covered by this report: From _____ to _____			
Describe the current mental, physical, and social condition of the incapacitated person (Attach additional pages if necessary):			
Mental			
Physical			
Social			
State any changes in the condition of the incapacitated person in the past year:			
Describe the living arrangements of the incapacitated person, including address:			
Describe all medical, educational, vocational, and professional services provided to the incapacitated person for the period covered by this report, and state your opinion of the adequacy of the care received by the incapacitated person:			

ANNUAL REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON

State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person:

State whether or not you agree with the current treatment or habilitation plan:

State your recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful, in your opinion, to a consideration of the guardianship:

Itemize all reasonable and necessary expenses you incurred and list any request for compensation you have made:

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge.

DATE

SIGNATURE OF GUARDIAN

DSS USE ONLY:

Date Received: _____

Date Reviewed: _____

Reviewer's Signature and Title

APPENDIX K - Guidelines for Review of Guardian's Report

Name of Incapacitated Person: The name of the person who is the subject of this report.

SSN: The social security number of the person who is the subject of this report.

Circuit Court Where Guardian Appointed: The name of the Circuit Court where the guardian who is completing this report was appointed.

Age: The age of the person who is the subject of this report.

Circuit Court Case No.: The case number assigned by the Circuit Court where the guardian was appointed.

Date Appointed: The date the guardian who is completing this report was appointed to serve as guardian for the person who is the subject of this report.

Guardian's Name: The name of the guardian who is completing this report.

Guardian's Address: The address of the guardian who is completing this report.

Guardian's Telephone Number: The telephone number of the guardian who completing this report.

Conservator's Name: The name of the person who serves as conservator for the person who is the subject of this report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Address: The address of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Telephone Number: The telephone number of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Same as Guardian: A check mark should be placed on the line if the same person serves as both guardian and conservator for the person who is the subject of this report.

The Period Covered by This Report: The date the reporting period began and the date the reporting period ended.

Describe the current mental, physical, and social condition of the incapacitated person (attach additional pages if necessary): This section should describe any mental, physical and/or social problems observed by the guardian and should note any changes observed in these areas in the past year.

State any changes in the condition of the incapacitated person in the past year: This section should describe any changes from the previous report.

Describe the living arrangements of the incapacitated person, including address: This section should describe the setting in which the incapacitated person lives (i.e., with relatives, in a nursing home or assisted living facility, alone, etc.)

Describe all medical, educational, vocational and professional services provided to the incapacitated person for the period covered by the report, and state your opinion of the adequacy of the care received by the incapacitated person: This section should explain the various services provided to the incapacitated person during the reporting period. This should include a statement that, in the opinion of the guardian, the services provided were adequate or were not adequate. If the guardian considers the services provided to be not adequate, the guardian should state what he/she plans to do to assure that services will improve. The guardian should identify areas in which he/she may need assistance from the local department of social services to assure adequate care.

State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person: This section should include a statement regarding the number of times the guardian visited the incapacitated person and the purpose of the visits. This should also include a statement describing activities performed by the guardian on behalf of the incapacitated person.

State whether or not you agree with the current treatment or habilitation plan: This section should include a statement regarding whether the guardian believes that treatments, services, or current living arrangement is adequate or effective to meet the incapacitated person's needs.

State your recommendations as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful, in your opinion, to a consideration of the guardianship: The guardian may recommend a continuation of the guardianship without changes; he/she may recommend expanding the authority of the guardian to areas not designated in the Court order; or he/she may recommend rescinding all or part of the authority of the guardian and restoring all or part of the authority of the incapacitated person. In each case, the guardian should attach documentation to support the recommendations.

Itemize all reasonable and necessary expenses you incurred and list any request for compensation you have made:

In this section the guardian should itemize expenses incurred and state the amount of compensation requested. Any request for compensation should be made to the conservator who has control of the person's financial affairs.

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge

Date: This should note the date the annual report is signed and dated by the guardian

Signature of Guardian: The guardian should use this line to affix his/her signature to the annual report.

DSS Use Only:

Date Received: The date the completed annual report is received at the local department of social services should be entered on this line. If an incomplete report is received and returned to the guardian for completion, the date of receipt of the completed report is the date to be entered.

Date Reviewed: The date the report is reviewed by an APS worker should be entered on this line.

Reviewer's Signature and Title: The APS worker who reviews the annual report should sign the report and include his/her title.

APPENDIX L-1 - Draft Letter to Guardian When the Initial Report Is Overdue

NOTICE OF OVERDUE GUARDIAN REPORT

Date: _____

Dear Guardian:

Re: (name of the incapacitated person)

This is to notify you that the (name of department) Department of Social Services has not received your Initial Guardian Report on (name of incapacitated person) which was due in this office on (date report was due). The *Code of Virginia*, § 37.2-1021, requires that persons who are appointed guardians of incapacitated persons file an initial report with the local department of social services within six months from the date of their qualifications. The initial report should address the status of the incapacitated person for the first four months of the guardianship.

The Clerk of the Circuit Court provided a form for your use in making this report. If you did not get the form, or have misplaced it, you may use the duplicate form that I am enclosing. Please submit your completed report to this office not later than (date report to be in LDSS office).

After you have filed this initial report, future reports on the status of (name of the incapacitated person) will be due annually. Your next report will cover a full year beginning (date of previous reporting period) and ending (one year after the date of the previous reporting period) and will be due in this office (4 months after the end of the reporting period).

If you need assistance with completing the form or if you have questions, you may telephone me at _____.

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

APPENDIX L-2 - Draft Letter to Guardian When the First or Subsequent Annual Report Is Overdue

NOTICE OF OVERDUE GUARDIAN REPORT

Date: _____

Dear Guardian:

Re: _____ (**name of the incapacitated person**)

This is to notify you that the Annual Report of the Guardian on (**name of incapacitated person**) which was due in this office on (**date report was due**) has not been received. The *Code of Virginia*, § 37.2-1021, requires that persons who are appointed guardians of incapacitated persons file annual reports on the status of those persons with the local department of social services.

The overdue report is for the one year period which began (_____) and ended (____). The report should address the status of (**name of the incapacitated person**) for this 12 month period. I am enclosing a report form for your use in preparing the report. Please submit your completed report to this office not later than (**date report to be in LDSS office**).

If you need assistance with completing the form or if you have questions, you may telephone me at _____.

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

APPENDIX M – Service Areas (as October 1, 2006)

Eastern	Central	Northern	Piedmont	Western
Sandra Coffey Pembroke Four Suite 300 Virginia Beach, VA 23462 ☎ 757-491-3980 or 804-662-9784 FAX: 757-552-1832	Barbara Jenkins 1604 Santa Rosa Road Suite 130 Richmond, VA 23229 ☎ 804-662-9783 FAX: 804-662-7023	David Stasko 170 West Shirley Avenue Suite 200 Warrenton, VA 22186 ☎ 540-347-6313 FAX: 540-347-6331	Bill Parcell Commonwealth of Virginia Bldg. 210 Church Avenue, SW Suite 100 Roanoke, VA 24011 ☎ 540-857-6502 FAX: 540-857-7364	Carol McCray 190 Patton Street Abingdon, VA 24210 ☎ 276-676-5636 FAX: 276-676-5621
Agencies	Agencies	Agencies	Agencies	Agencies
Accomack (001) 22 Brunswick (025) 13 Chesapeake (550) 23 Dinwiddie (053) 19 Franklin City (620) 23 Gloucester (073) 18 Greensville (081)/Emporia (595) 19 Hampton (650) 23 Isle of Wight (093) 23 James City (095) 23 Matthews (115) 18 Newport News (700) 23 Norfolk (710) 23 Northampton (131) 22 Portsmouth (740) 23 Prince George (149) 19 Southampton (175) 23 Suffolk (800) 23 Surry (181) 19 Sussex (183) 19 Virginia Beach (810) 23 Williamsburg (830) 23 York (199)/Poquoson (735) 23	Amelia (007) 14 Buckingham (029) 14 Caroline (033) 16 Charles City (036) 15 Chesterfield (041)/ Colonial Heights (570) 15 Cumberland (049) 14 Essex (057) 18 Fluvanna (065) 10 Goochland (075) 15 Hanover (085) 15 Henrico (087) 15 Hopewell (670) 19 King and Queen (097) 18 King William (101) 18 Lancaster (103) 17 Lunenburg (111) 14 Middlesex (119) 18 New Kent (127) 15 Northumberland (133) 17 Nottoway (135) 14 Petersburg (730) 19 Powhatan (145) 15 Prince Edward (147) 14 Richmond City (760) 15 Richmond County (159) 17 Westmoreland (193) 17	Alexandria (510) 8 Arlington (013) 8 Clarke (043) 7 Culpeper (047) 9 Fairfax (059)/Fairfax City (600)/Falls Church (610) 8 Fauquier (061) 9 Frederick (069) 7 Fredericksburg (630) 16 Greene (079) 10 Harrisonburg (660) 6/ Rockingham (165) King George (099) 16 Loudoun (107) 8 Louisa (109) 10 Madison (113) 9 Manassas City (683) 8 Manassas Park (685) 8 Orange (137) 9 Page (139) 7 Prince William (153) 8 Rappahannock (157) 9 Shenandoah (171) 7 Spotsylvania (177) 16 Stafford (179) 16 Warren (187) 7 Winchester (840) 7	Albemarle (003) 10 Alleghany(005)/Covington (580) 5/ Clifton Forge (560) 5 Amherst (009) 11 Appomattox (011) 11 Bath (017) 6 Bedford (019)/Bedford City (515) 11 Botetourt (023) 5 Campbell (031) 11 Charlotte (037) 14 Charlottesville (540) 10 Craig (045) 5 Danville (590) 12 Franklin County (067) 12 Halifax (083)/South Boston (780) 13 Henry (089)/ Martinsville (690) 12 Highland (091) 6 Lynchburg (680) 11 Mecklenburg (117) 13 Nelson (125) 10 Pittsylvania (143) 12 Roanoke (770) 5 Roanoke Co. (161)/Salem (775) 5 Rockbridge (163)/Buena Vista (530)/ Lexington (678) 6 Shenandoah Valley (Staunton (790)Augusta (015)/ Waynesboro (820)6)	Bland (021) 3 Bristol (520) 3 Buchanan (027) 2 Carroll (035) 3 Dickenson (051) 2 Floyd (063) 4 Galax (640) 3 Giles (071) 4 Grayson (077) 3 Lee (105) 1 Montgomery (121) 4 Norton (720) 1 Patrick (141) 12 Pulaski (155) 4 Radford (750) 4 Russell (167) 2 Scott (169) 1 Smyth (173) 3 Tazewell (185) 2 Washington (191) 3 Wise (195) 1 Wythe (197) 3
Total: 23 LDSS	Total: 26 LDSS	Total: 25 LDSS	Total: 24 LDSS	Total: 22 LDSS

The number in parentheses following locality name is the FIPS code; the number following the FIPS code is for the Planning District in which the locality is located. *City DSS associated with county DSS, but have separate budgets. There are 120 local departments of social services

APPENDIX N - Directory of Agencies/Programs

While conducting adult protective services investigations, it is frequently appropriate to work with other agencies/programs with a related interest. This appendix provides addresses, telephone numbers, and areas served for some of those agencies/programs with a related interest.

DIVISION OF LICENSING PROGRAMS DEPARTMENT OF SOCIAL SERVICES	
CENTRAL AREA (804) 662-9743 1604 Santa Rosa Road (804) 662-7011 FAX Wythe Building, Suite 130 Richmond, VA 23229-5008 COUNTIES SERVED: Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland; CITIES SERVED: Colonial Heights, Hopewell, Petersburg, Richmond, South Boston	PIEDMONT AREA (540) 857-7971 (540) 857-7364 FAX Commonwealth of Virginia Building 210 Church Avenue, SW, Suite 100 Roanoke, VA 24011-1779 COUNTIES SERVED: Alleghany, Amherst, Appomattox, Bath, Bedford, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Henry, Nelson, Patrick, Pittsylvania, Roanoke, Rockbridge; CITIES SERVED: Bedford, Buena Vista, Clifton Forge, Covington, Danville, Lexington, Lynchburg, Martinsville, Roanoke, Salem
EASTERN AREA (757) 491-3990 Pembroke Office Park (757) 417-3640 FAX Pembroke IV Office Building, Suite 300 Second St. at Virginia Beach Blvd. Virginia Beach, VA 23462-5496 COUNTIES SERVED: Accomack, Northampton, Southampton, Greensville; CITIES SERVED: Chesapeake, Emporia, Franklin, Norfolk, Portsmouth, Suffolk, Virginia Beach	VERONA AREA (540) 248-9345 (540) 248-9334 FAX PO Box 350, 68 Dick Huff Lane Verona, VA 24482-0350 COUNTIES SERVED: Albemarle, Augusta, Clarke, Frederick, Greene, Highland, Madison, Orange, Page, Rockingham, Shenandoah, Warren; CITIES SERVED: Charlottesville, Harrisonburg, Staunton, Waynesboro, Winchester
PENINSULA AREA (757) 594-7594 (757) 594-7593 FAX 729 Thimble Shoals Blvd., Oyster Point Park, Bldg. 6, Ste. 6-B Newport News, VA 23606 COUNTIES SERVED: Gloucester, Isle of Wight, James City, Mathews, Middlesex, Surry, Sussex, York; CITIES SERVED: Hampton, Newport News, Poquoson, Williamsburg	NORTHERN AREA (540) 347-6345 (540) 347-6304 FAX 170 W. Shirley Avenue, Suite 200 Warrenton, VA 20186 COUNTIES SERVED: Culpeper, Fauquier, Prince William, Rappahannock, Spotsylvania, Stafford; CITIES SERVED: Fredericksburg, Manassas, Manassas Park
FAIRFAX AREA (703) 934-1505 (703) 934-1558 FAX 11320 Random Hills Road, Suite 200 Fairfax, VA 22030 COUNTIES SERVED: Arlington, Loudoun, Fairfax; CITIES SERVED: Alexandria, Fairfax, Falls Church	WESTERN AREA (276) 676-5490 190 Patton Street (276) 676-5621 FAX Abingdon, VA 24210 COUNTIES SERVED: Bland, Buchanan, Carroll, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe; CITIES SERVED: Bristol, Galax, Norton, Radford

OFFICE OF LICENSURE
DEPARTMENT OF MENTAL HEALTH, MENTAL
RETARDATION AND SUBSTANCE ABUSE SERVICES

Office of Licensure
Northern Virginia Training Center
9901 Braddock Road
Fairfax, VA 22032
703-323-2126
703-323-2097
703-323-3197
703-323-2110 FAX

Office of Licensure
Southeastern Virginia Training Center
2100 Steppingstone Square
Chesapeake, VA 23320-2591
757-424-8364
757-424-8348 FAX

Office of Licensure
Eastern State Hospital
4601 Ironbound Road, Building 11
Williamsburg, VA 23187
757-253-5465
757-253-5440 FAX

Office of Licensure
Southwestern Satellite Office
340 Bagley Circle
Marion, VA 24354
540-783-1219
540-831-4006 FAX

Office of Licensure
Western State Hospital
P.O. Box 2500
Staunton, VA 24401
540-332-8423
540-332-8314 FAX

OFFICE OF HUMAN RIGHTS,
DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND
SUBSTANCE ABUSE SERVICES

Office of Human Rights
P. O. Box 1797
Richmond, VA 23218
804-786-3988
804-371-2308 FAX

LONG-TERM CARE OMBUDSMAN PROGRAM

Office of the State Long-Term Care Ombudsman
Virginia Association of Area Agencies on Aging
24 East Cary Street, Suite 100
Richmond, VA 23219
Telephone: 804-565-1600; FAX: 804-644-5640
Toll free: 1-800-552-3402
State Ombudsman: Joani Latimer
Assistant State Ombudsman: Gail Shirley
Email: Elderights@aol.com; jlatimer@theV4A.org; gshirley@theV4A.org

LOCAL OMBUDSMAN PROGRAMS

Planning Service Area	Areas Served
Mountain Empire Older Citizens, Inc. Long-Term Care Ombudsman Program P.O. Box 888 Big Stone Gap, VA 24219-0888 Phone: 276-523-4202 FAX: 276-523-4208 Toll Free: 1-800-252-6362	Counties: Lee, Wise, & Scott. City: Norton
Appalachian Agency For Senior Citizens Long-Term Care Ombudsman Program P.O. Box 765 Cedar Bluff, VA 24609-0765 Phone: 276-964-4915 FAX: 276-963-0130 Toll Free: 1-800-656-2272	Counties: Dickenson, Buchanan, Tazewell, Russell
District Three Governmental Cooperative Long-Term Care Ombudsman Program 4453 Lee Highway Marion, VA 24354-4270 Phone: 276-783-8157 x.3131 FAX: 276-783-3003 Toll Free: 1-800-541-0933	Counties: Washington, Smyth, Wythe, Bland, Grayson, Carroll Cities: Galax, Bristol
New River Valley Agency on Aging 141 East Main Street, Ste. 500 Pulaski, Virginia 24301 Phone: (540) 980-7720 Fax: (540) 980-7724 Toll-Free: 1-866-260-4417	Counties: Giles, Floyd, Pulaski, Montgomery City: Radford
LOA-Area Agency on Aging Long-Term Care Ombudsman Program P.O. Box 14205 Roanoke, Virginia 24038-4205 Phone: 540-345-0451 x. 3041 FAX: 540-206-0002	Counties: Roanoke, Craig, Botetourt, Allegany Cities: Salem, Roanoke, Clifton Forge, Covington
Valley Program for Aging Services, Inc. Long-Term Care Ombudsman Program P.O. Box 817 Waynesboro, Virginia 22980-0603 Phone: 540-949-7141 FAX: 540-949-7143 Toll Free: 1-800-868-8727	Counties: Rockingham, Rockbridge, Augusta, Highland, Bath. Cities: Buena Vista, Lexington, Staunton, Waynesboro, Harrisonburg
Shenandoah Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 207 Mosby Lane Front Royal, Virginia 22630-2611 Phone: 540-635-7141 ext. 211 FAX: 540-636-7810 Toll Free: 1-800-883-4122	Counties: Page, Shenandoah, Warren, Clarke, Frederick City: Winchester
Northern Virginia Long-Term Care Ombudsman Program 12011 Government Center Pkwy., Ste. 708 Fairfax, Virginia 22035 - 1104 Phone: 703-324-5861 FAX: 703-324-3575	Counties: Arlington, Fairfax, Loudoun, Prince William Cities: Alexandria, Fairfax, Falls Church, Manassas, Manassas Park

Rappahannock-Rapidan Community Services Board Long-Term Care Ombudsman Program P.O. Box 1568 15361 Bradford Road Culpeper, Virginia 22701 Phone: 540-825-3100 x. 3450 FAX: 540-825-0392	Counties: Orange, Madison, Culpeper, Rappahannock, Fauquier
Jefferson Area Board For Aging Long-Term Care Ombudsman Program 674 Hillsdale Drive, Suite 9 Charlottesville, Virginia 22901 Phone: 434-817-5222 FAX: 434-817-5230	Counties: Nelson, Albemarle, Louisa, Fluvanna, Greene City: Charlottesville
Central Virginia Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 3024 Forest Hills Circle Lynchburg, Virginia 24501 Phone: 434-385-9070 FAX: 434-385-9209 Toll-Free: 1-888-510-4185	Counties: Bedford, Amherst, Campbell, Appomattox Cities: Bedford, & Lynchburg
Southern Area Agency on Aging Long-Term Care Ombudsman Program 433 Commonwealth Boulevard Martinsville, Virginia 24112-4228 Phone: 276-632-6442 FAX: 276-632-6252 Toll Free: 1-800-468-4571	Counties: Patrick, Henry, Franklin, Pittsylvania Cities: Martinsville, & Danville
Lake Country Area Agency on Aging Long-Term Care Ombudsman Program 1105 West Danville, Street South Hill, Virginia 23970-3501 Phone: 434-447-7661 x. 57 FAX: 434-447-8760 Toll Free: 1-800-252-4464	Counties: Halifax, Mecklenburg, Brunswick City: South Boston
Piedmont Senior Resources Area Agency on Aging, Inc. Long-Term Care Ombudsman Program P.O. Box 398 Burkeville, Virginia 23922-0398 Phone: 434-767-5588 FAX: 434-767-4608	Counties: Nottoway, Prince Edward, Charlotte, Lunenburg, Cumberland, Buckingham, Amelia
Senior Connections - Capital Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 24 East Cary Street Richmond, Virginia 23219-3796 Phone: 804-343-3000 FAX: 804-649-2258 Toll Free: 1-800-989-2286	Counties: Charles City, Chesterfield, Goochland, Hanover, Henrico, Powhatan City: Richmond
Rappahannock Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 171 Warrenton Road Fredericksburg, Virginia 22405 Phone: 540-371-3375 FAX: 540-371-3384 Toll Free: 1-800-262-4012	Counties: Caroline, Spotsylvania, Stafford, King George City: Fredericksburg

Bay Aging Long-Term Care Ombudsman Program P.O. Box 610 Urbanna, Virginia 23175-06410 Phone: 804-758-2386 x. 44 FAX: 804-758-5773	Counties: Westmoreland, Northumberland, Richmond, Lancaster, Essex, Middlesex, Mathews, King & Queen, King William, Gloucester
Crater District Area Agency on Aging 23 Seyler Drive Petersburg, Virginia 23805 Phone: 804-732-7020 FAX: 804-732-7232	Counties: Dinwiddie, Sussex, Greensville, Surry, Prince George Cities: Petersburg, Hopewell, Emporia, Colonial Heights
Hampton Roads Long-Term Care Ombudsman Program Senior Services of Southeastern VA 5 Interstate Corporate Center 6350 Center Drive, Suite 101 Norfolk, VA 23502-4121 Phone: 1-800-766-8059 FAX: 757-461-1068	Counties: Southampton, Isle of Wight, James City, York Cities: Franklin, Suffolk, Portsmouth, Chesapeake, Virginia Beach, Norfolk, Williamsburg, Newport News, Hampton, Poquoson
Eastern Shore Area Agency on Aging - Community Action Agency, Inc. Long-Term Care Ombudsman Program P.O. Box 415 36282 Lankford Highway Colonial Square, Suite 13-D Belle Haven, Virginia 23306 Phone: 757-442-9652 FAX: 757-442-9303 Toll-Free: 1-800-452-5977	Counties: Accomack, Northampton

(Revised July 2003)

Office of the Chief Medical Examiner
400 E. Jackson Street
Richmond, VA 23219
Phone: 804-786-3174

District	Areas Served
Central District 400 East Jackson Street Richmond, VA 23219 Phone: 804-786-3174	Counties Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Matthews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Spotsylvania, Stafford, Surry, Sussex, Richmond County, Westmoreland. Cities Charlottesville, Colonial Heights, Emporia, Fredericksburg, Hopewell, Petersburg, Richmond, South Boston, Williamsburg.
Northern District 9797 Braddock Road Suite 100 Fairfax, VA 22032 Phone: 703-764-4640	Counties Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Shenandoah, Warren Cities Alexandria, Fairfax City, Falls Church, Manassas City, Manassas Park, Winchester.

Tidewater District 830 Southampton Ave. Suite 200 Norfolk, VA 23510 Phone: 757-683-8366	Counties Accomack, Isle of Wight, Northampton, Southampton, York. Cities Chesapeake, Franklin City, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach.
Western District 6600 Northside High School Road Roanoke, VA 24019 Phone: 540-561-6615	Counties Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe. Cities Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro.

DEPARTMENT OF HEALTH PROFESSIONS

Department of Health Professions 6603 West Broad Street Richmond, VA 23230	804-662-9900 804-662-9943 FAX
Board of Audiology and Speech Pathology	804-662-9111 804-662-9523 FAX
Board of Counseling	804-662-9912 804-662-7250 FAX
Board of Dentistry	804-662-9906 804-662-7246 FAX
Board of Funeral Directors and Embalmers	804-662-9907 804-662-9523 FAX
Board of Long-Term Care Administrators	804-662-7457 804-662-7246 FAX
Board of Medicine	804-662-9908 804-662-9517 FAX
Board of Nursing	804-662-9909 804-662-9512 FAX
Nurse Aide Registry	804-662-7310 804-662-9512 FAX
Board of Optometry	804-662-9910 804-662-7098 FAX
Board of Pharmacy	804-662-9911 804-662-9313 FAX
Board of Physical Therapy	804-662-9924 804-662-9923 FAX
Board of Psychology	804-662-9913 804-662-7250 FAX
Board of Social Work	804-662-9914 804-662-7250 FAX

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY	
Virginia Office for Protection and Advocacy 1910 Byrd Avenue, Suite 5 Richmond, VA 23230 Toll-free: 1-800-552-3962	
DEPARTMENT OF HEALTH, OFFICE OF LICENSURE AND CERTIFICATION	
Virginia Department of Health Office of Licensure and Certification 3600 West Broad Street, Suite 216 Richmond, VA 23230 804-367-2102 804-367-2149 Fax Complaint Hotline: 1-800-955-1819	
MEDICAID FRAUD CONTROL UNIT	
Office of the Attorney General Medicaid Fraud Control Unit 900 East Main Street Richmond, VA 23219 804-786-3327 804-786-1991 FAX	

ADULT PROTECTIVE SERVICES TOLL-FREE HOTLINE

1-888-832-3858

or

1-888-83ADULT

**DOMESTIC VIOLENCE AND SEXUAL ASSAULT TOLL-FREE
HOTLINE**

1-800-838-8238

APPENDIX O - REFERRAL FOR INVESTIGATION FROM ADULT PROTECTIVE SERVICES

DEPARTMENT OF SOCIAL SERVICES

DATE

This Adult Protective Services (APS) report is referred for your information in accordance with the *Code of Virginia*, § 63.2-1603 through 1610 for administrative or criminal action that your agency considers appropriate.

- ☐ DEPARTMENT OF HEALTH, OFFICE OF LICENSURE AND CERTIFICATION
- ☐ DEPARTMENT OF HEALTH PROFESSIONS
- | | |
|---|---|
| <input type="checkbox"/> Board of Audiology and Speech Pathology | <input type="checkbox"/> Board of Long-Term Care Administrators |
| <input type="checkbox"/> Board of Counseling | <input type="checkbox"/> Board of Optometry |
| <input type="checkbox"/> Board of Dentistry | <input type="checkbox"/> Board of Pharmacy |
| <input type="checkbox"/> Board of Funeral Directors and Embalmers | <input type="checkbox"/> Board of Physical Therapy |
| <input type="checkbox"/> Board of Medicine | <input type="checkbox"/> Board of Psychology |
| <input type="checkbox"/> Board of Nursing | <input type="checkbox"/> Board of Social Work |
- ☐ DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (DMAS)
- ☐ DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES
- ☐ DEPARTMENT OF SOCIAL SERVICES AND LICENSING
- ☐ LAW ENFORCEMENT
- ☐ LONG-TERM CARE OMBUDSMAN PROGRAM
- | |
|--|
| <input type="checkbox"/> State Ombudsman |
| <input type="checkbox"/> Local Program |
- ☐ MEDICAID FRAUD / ATTORNEY GENERAL'S OFFICE
- ☐ VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY
- ☐ MEDICAL EXAMINER
- ☐ REGIONAL AS/APS SPECIALIST
- ☐ MEDICAID ELIGIBILITY WORKER
- ☐ OTHER: _____
- ☐ An APS report received by this department alleges that adult abuse, neglect or exploitation occurred/occurring or there is risk of abuse, neglect or exploitation.
- | |
|---|
| <input type="checkbox"/> An APS Investigation is being conducted. |
| <input type="checkbox"/> An APS Investigation has been completed. |
| <input type="checkbox"/> The APS report received by this Local Department does not meet criteria for an APS investigation and will not be investigated by the Local Department. |

FROM:

_____ Local Department of Social Services
received an adult protective services report on _____ concerning:
mm/dd/yy

The individual who was the subject of the APS investigation is:

Name _____
 DOB _____ Age _____ Sex ☐ Male ☐ Female
 Address _____ Facility _____
 City _____ State _____ Zip _____

The individual who was the alleged perpetrator is:

Name _____
 DOB _____ Age _____ Sex ☐ Male ☐ Female
 Address _____
 City _____ State _____ Zip _____

Relationship to the alleged victim:

☐ See additional comments for multiple alleged perpetrators:

Description of the Incident of Abuse, Neglect or Exploitation:[illegible]

Investigation completed: Summary of Findings:

[illegible]

Additional Comments:**Disposition:**

- ☐ Needs Protective Services and Accepts
- ☐ Needs Protective Services and Refuses
- ☐ Need for Protective Services No Longer Exists
- ☐ Unfounded

I am referring the case to your agency for investigation pursuant to *Code of Virginia*, §63.2-1605.

Adult Protective Services Worker

Department of Social Services

Address

City

State

Zip

Telephone Number

E-Mail

APPENDIX O-1 - Instructions for Referral for Investigation Form

Purpose of Form: To provide a method of referring Adult Protective Service Report information to appropriate licensing, regulatory or legal authorities as required by the *Code of Virginia* and to document that referral in the case record.

Use of the Form: The *Code of Virginia*, § 63.2-1605 (C) states: THE LOCAL DEPARTMENT SHALL REFER ANY APPROPRIATE MATTER AND ALL RELEVANT DOCUMENTATION TO THE APPROPRIATE LICENSING, REGULATORY, OR LEGAL AUTHORITY FOR ADMINISTRATIVE ACTION OR CRIMINAL INVESTIGATION. Upon receipt of information that is pertinent to licensing, regulatory or law enforcement authorities, the APS worker should enter the appropriate information and immediately send the form to the authority. A copy of the form can be sent with the sections on "Summary of Investigation" and "Disposition" completed as a follow-up to the initial notification. The original form should be kept in the case record.

Department: Enter the name of the local department of social services making the referral.

Date: Enter the date of the referral.

Referral: Check the appropriate box for each agency being sent the referral form. One form may be completed and copies sent to each authority. Contact information for the authority can be found in Appendix N.

Investigation Status: Check the appropriate box.
"An APS Investigation is being conducted" means the department has initiated an investigation or is in the process of conducting an investigation.

"An APS investigation has been completed": means the department has completed the investigation and a disposition has been made. [Note: If the department uses this form to notify an authority when the investigation was being conducted, the same form can be used to indicate the investigation has been completed.]

"... does not meet criteria...": means that information received by the department does not meet validity criteria for an APS report but the information may be pertinent to the authority.

Date of Report: Enter the date that the APS report was received in the department

Subject of the investigation: Enter information concerning the alleged victim of abuse, neglect or exploitation.

Alleged Perpetrator: Enter information on the alleged perpetrator. If there is more than one alleged perpetrator, use the "Additional Comments" section to provide the information.

Description of the Incident: Enter information concerning the allegations of abuse, neglect or exploitation.

Summary of Findings: Enter a summary of the findings when the investigation has been completed.

Additional Comments: Enter any additional information that would be helpful to the authority for its investigation.

Disposition: Check the appropriate box indicating the case disposition.

Contact information: The APS worker should provide his/her contact information if additional information is needed by the authority receiving the referral.

APPENDIX P-1 - Assurances of Confidentiality

FIPS code:	Date of Request:
Worker Assigned:	Date Information Disclosed:
	Date Subject Notified:

Name of Adult (Subject of Data Request) _____

Address: _____

Name of Agency: _____

Address: _____

Telephone: _____

Person Making Request: _____

Purpose for which information is requested: _____

The undersigned agrees to use the information obtained pursuant to Section 63.2-104 of the *Code of Virginia* only for the purpose for which it is made available and to hold the information confidential except to the extent that disclosure is required by law.

(Signature)

(Agency)

(Date)

APPENDIX P-2 - Instructions for Assurances of Confidentiality Form

Form Number: 032-02-702

Purpose of Form: To provide a method of maintaining a record of agencies requesting disclosure of information pursuant to Section 63.2-104 of the *Code of Virginia* and to document that the agency requesting information has given appropriate assurances that the information will be held confidential except to the extent that disclosure is required by law.

Use of Form: To be used by local departments of social services when a request for disclosure of information pursuant to Section 63.2-104 is received. This form will satisfy the *Code of Virginia* requirement that the Board receive appropriate assurances from the agencies to which the information is disclosed that the information will be held confidential except to the extent that disclosure is required by law.

Instructions for Preparation of the Form:

FIPS Code - Enter the FIPS code of the city or county in which the local department receiving the request is located.

Date of Request - Enter the date the department received the request for information.

Worker Assigned - Enter the name of the worker who is assigned to the case.

Date Information Disclosed - Enter the date information was disclosed to the agency making the request.

Date Subject Notified - Enter the date the subject of the data or his legally appointed guardian was notified that information was disclosed to the requesting agency.

Name of Adult (Subject of Data Request) - Enter the name of the adult who is the subject of the data request.

Address - Enter the mailing address of the data subject.

Name of Agency - Enter the name of the agency requesting disclosure of information.

Address - Enter the mailing address of the agency requesting disclosure of information.

Telephone - Enter the telephone number of the agency requesting disclosure of information.

Person Making Request - Enter the name of the person requesting information. The person/agency must have a legitimate interest as defined in Sections 38.1 and 38.2 of this chapter.

Purpose for which information is requested - Briefly state the purpose for which the information is needed. Is the purpose related to the protective services goal for the adult?

Signature - Obtain the signature of the person who has the authority to give the assurance stated above the signature line.

Name of Agency - Enter the name of the agency to which information is disclosed.

Date - Enter the date the form is signed by the person who is authorized to give assurances.

APPENDIX Q - Letter of Understanding

We, the undersigned, understand and agree that the _____ *(local department name)*
Department of Social Services and _____ *(the agency to receive information)* have service provision
and _____ *(insert nature of the responsibility of the agency receiving information)* responsibility
respectively when there is abuse, neglect or exploitation of an adult _____ *(list any qualifying terms that
may apply; for example an adult who is a resident in a DMHMRSAS facility)*.

The Code of Virginia (Section 63.2-104) addresses the confidentiality of records and information concerning the provision of social services. The Code states:

“The records, information, and statistical registries of the Department, local departments, and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the Board, and their agents shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.”

It shall be unlawful for any officer, agent, or employee of any child-welfare agency, the Commissioner, the State Board, their agents or employees, any person who has held any such position, and any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.”

All reports, documentary evidence, and other information received or maintained by the director (of the local Department of Social Services) shall be confidential and not subject to the Virginia Freedom of Information Act except that such information may be disclosed to persons having a legitimate interest therein where disclosure of the information is reasonably necessary for the conduct of investigations by state or local government agencies or the provision of services to the adult who is the subject of the Adult Protective Services report, in accordance with regulations promulgated by the Board. Such regulations shall require that the Board receive appropriate assurances from the agencies to which the information is disclosed that it will be held confidential except to the extent that disclosure is required by law.

The (agency to receive information) is recognized in Social Services Board policy (effective January 1, 1990) as having legitimate interest in confidential APS information pursuant to this section of the Code.

This Letter of Understanding, when signed by both parties, shall serve as assurance that confidential Adult Protective Services information shared with (agency to receive information) pursuant to this section shall be held confidential in accordance with the provisions of 22 VAC 40-740-50.

(Signature of Department Head) (Date) (Signature of Agency Head) (Date)

APPENDIX R-1 - Medicaid Referral to APS to Request Assessment for Guardianship (Side one)

ELIGIBILITY WORKER REFERRAL

Date _____

From _____ Worker # _____ Telephone # _____
(Eligibility Worker)

To _____
(Adult Protective Services Worker/Supervisor)

The adult listed below does not have a power of attorney, guardian, conservator, or family substitute member. This adult does not appear capable of understanding, completing and signing an application/redetermination form for Medicaid.

Name _____

SSN _____ Date of Birth _____

Medicaid ID Number _____

Home Address _____

Current Location _____

Is this adult currently in a hospital, nursing facility, or assisted living facility?

Yes _____ No _____

If yes, name of the facility _____

Contact Person _____

Address of the facility _____

Telephone number of the facility _____

APPENDIX R-2 - Medicaid Referral to APS to Request Assessment for Guardianship (Side two)

APS RESPONSE

(For use only when APS is requested to investigate the need for the appointment of a guardian under Medicaid Authorized Representative Policy)

Date Received _____

Date Completed _____

From: _____
(Adult Protective Service Worker/Supervisor)

Telephone _____

To: _____
(Eligibility Worker)

Worker# _____ Telephone _____

Check applicable block:

- ☐ APS has investigated and petitioned the Circuit Court and a guardian was appointed for the adult identified on this form.

Date guardian was appointed _____

Name of the guardian _____

Address of the guardian _____

Phone number of guardian _____

- ☐ APS has investigated and petitioned the Circuit Court and a guardian was not appointed.

- ☐ APS has investigated and did not petition the Circuit Court for the appointment of a guardian for the following reasons: _____

REIMBURSABLE COSTS OF GUARDIANSHIP PROCEEDINGS (Side 3)

Costs associated with petitioning the Court for appointment of a guardian for a Medicaid applicant who is unable to apply for himself/herself is reimbursable through reporting to LASER Cost Code 21704, Guardianship Fees – Admin. This program will be funded 50% State and 50% Federal.

Enter the expenses incurred during guardianship proceedings:

EXPENSES INCURRED DURING GUARDIANSHIP PROCEEDINGS	
Evaluation	\$
Guardian ad litem legal fees	\$
Attorney legal fees	\$
Court filing fees	\$
Other costs (itemize and attach)	\$
TOTAL	\$

This form will serve as documentation for reimbursable expenses.

(Date)

(Signature of Person Requesting Reimbursement)

*** THIS FORM MAY BE DUPLICATED.**

APPENDIX S - Instructions for Completing Medicaid Referral to APS to Request Assessment for Guardianship

PURPOSE OF THE FORM

This form has three pages and purposes:

1. **ELIGIBILITY WORKER REFERRAL** (side 1) provides a mechanism for eligibility workers (EW) to refer to APS certain adults who are unable to sign a Medicaid application/redetermination form and have no family substitute member or authorized representative designated to apply on his/her behalf. The use of this referral complies with Medicaid Authorized Representative Policy.
2. **APS Response** (side 2) provides a mechanism for APS workers to notify the EW of the result of the action taken on the referral.
3. **REIMBURSABLE COSTS OF GUARDIANSHIP PROCEEDINGS** (side 3) provides documentation of the costs related to the appointment of a guardian. It is used by APS only.

USE OF THE FORM:

Eligibility:

The EW completes side 1 of the form when it is determined that an adult Medicaid applicant cannot sign a Medicaid application and does not have an authorized representative. The EW submits the completed form to the appropriate APS worker/supervisor.

When a response is received, it is filed in the Medicaid record.

APS:

Receipt of a completed referral form from an eligibility worker should be taken as an APS report and investigated to determine if the adult needs protective services and, specifically, to determine if a guardian is needed to make and sign a Medicaid application on the adult's behalf.

At the point a disposition is made, a copy of the completed form is forwarded to the referring eligibility worker and a copy is retained in the APS record. The original is retained as documentation of the costs of the guardianship proceedings and is to be used as the basis of a request for reimbursement from Medicaid.

INSTRUCTIONS FOR COMPLETING THIS FORM

Side 1:

ELIGIBILITY WORKER REFERRAL FORM

Date: Enter the date the eligibility worker completes the form.

From: Enter the name, worker number, and telephone number of the eligibility worker making the referral.

To: Enter the name of the APS worker or supervisor to whom the form is directed.

Name: Enter the name of the adult Medicaid applicant/recipient.

SSN: Enter the Social Security number of the adult Medicaid applicant/recipient.

Date of Birth: Enter the birth date of the adult Medicaid applicant/recipient.

Medicaid ID Number: Enter the Medicaid ID number of the adult Medicaid applicant/recipient

Home Address: Enter the home address of the adult Medicaid applicant/recipient

Current Location: Enter the current location of the adult Medicaid applicant/recipient if other than his home.

Is This Adult Currently In A Hospital, Nursing Facility, Or Assisted Living Facility? Check "yes" or "no."

If Yes, Name Of The Facility: Enter the name of the facility.

Contact Person: Enter the name of a contact at the facility.

Address of the facility: Enter the address of the facility.

Telephone number of the facility: Enter the telephone number of the facility.

Side 2:

APS Response

Date Received: Enter the date the referral was received.

Date Completed: Enter the date the response was completed.

From: Enter the name and telephone number of the APS worker or supervisor assigned.

To: Enter the name, worker number and telephone number of the eligibility worker who made the referral

Check applicable block:

Check the first block to document that the APS investigation resulted in the filing of a petition and a guardian being appointed. Enter the date the guardian was appointed, the guardian's name, address, and telephone number.

Check the second block if a petition was filed but no guardian was appointed.

Check the third block if no petition was filed and state the reasons.

Side 3:

REIMBURSABLE COSTS OF GUARDIANSHIP PROCEEDINGS

Evaluation: Enter the cost of evaluation.

Guardian ad litem legal fees: Enter the cost of guardian ad litem legal fees.

Attorney legal fees: Enter the cost of attorney legal fees.

Court filing fees: Enter the cost of Court filing fees.

Other costs: Enter the costs of incurred expenses and attach an itemized list of the expenses.

TOTAL: Enter the total cost of the incurred expenses. This is the amount of expenses for which Medicaid reimbursement will be sought.

Date: Enter the date reimbursement is requested.

Signature of Person Requesting Reimbursement: The form must be signed by the person requesting reimbursement.

APPENDIX T - Indicators of Abuse, Neglect and Exploitation

INDICATORS OF ABUSE, NEGLECT AND EXPLOITATION

ABUSE

Multiple/severe bruises, burns, welts	Sprains, dislocation, lacerations, cuts, punctures, black eyes, bed sores	Verbal assaults, threats, intimidation
Bilateral bruises on upper arms	Untreated injuries, broken glasses/frames,	Prolonged interval between injury and treatment
Clustered bruises on trunk	Untreated medical condition: Burns,	Demonstrates fear of caregiver
Bruises which resemble an object	Scalding	Case manager not allowed to see adult alone
Old and new bruises	Restrained: tied to bed, tied to chair, locked in, isolated, over-medicated	Recent or sudden changes in behavior
Signs of bone fractures		Unexplained fear
Broken bones, open wounds, skull fracture		Unwarranted suspicion
Striking, shoving, beating, kicking, scratching		
Internal injuries		

SEXUAL ABUSE

Genital or urinary irritation, injury, infection or scarring	Intense fear reaction to an individual or to people in general	Disturbed peer interactions
Presence of a sexually transmitted disease	Mistrust of others	Depression or blunted affect
Frequent, unexplained physical illness	Nightmares, night terrors, sleep	Poor self-esteem
	Direct or coded disclosure of sexual abuse	Self-destructive activity or suicidal behavior

NEGLECT

Untreated medical condition	Insect infested living quarters	Unpaid bills
Untreated mental health problem(s)	No functioning toilet	Inappropriate or inadequate clothing
Bedsore	No heat, running water, electricity	Needs but does not have glasses, hearing aide, teeth, prosthetic device
Medications not taken as prescribed	Homelessness	Hazardous living conditions
Malnourishment	Lacks needed supervision	Soiled bedding/furniture
Dehydration	Lack of food or inadequate food	Frequent moving
Dirt, fleas, lice on person	Uneaten food over period of time	House too hot or cold
Fecal/urine smell	Accumulated newspapers/debris	
Animal infested living quarters		

FINANCIAL EXPLOITATION

Unexplained disappearance of funds or valuables	Change in payee, power of attorney, Will	Personal belongings missing
Dependent relationship (e.g., adult child is financially dependent upon the older person or the older person is dependent for caregiving by the alleged abuser)	Caregiver is overly frugal	Adult is kept isolated
Misuse of money or property by another person	Unexplained cash flow	Signature on check that does not resemble the adult's signature
Transfer of property, savings, etc.	Unusual household composition	Adult complains doesn't know what happened to money
Excessive payment for care and/or services	Chronic failure to pay bills	Checks no longer come to house
Adult unaware of income amount		Adult reports signing papers and doesn't know what was signed
Depleted bank account		
Sudden appearance of previously uninvolved relatives/friends		

APPENDIX U - Code of Ethics

The Adult Protective Services Social Worker is committed to the preservation of the older/incapacitated adult's rights, safety, and life style to the greatest degree possible.

The Adult Protective Services Social Worker accepts the older/incapacitated adult's right to make decisions until he/she delegates that right to another person or a Court grants that right to another.

The Adult Protective Services Social Worker will respect the privacy of the older/incapacitated adult and hold in confidence all information obtained in the course of providing services, following law and Department policy.

The Adult Protective Services Social Worker will represent the interest of the older/incapacitated adult when the interest of family, community and others compete.

The Adult Protective Services Social Worker will exercise due diligence in investigating reports and providing protection to older/incapacitated adults.

The Adult Protective Services Social Worker will develop relationships with other professionals, agencies, and organizations to facilitate a multi-disciplinary approach to enhance the quality of protective services.

The Adult Protective Services Social Worker will promote community awareness of the problem of abuse, neglect or exploitation of older/incapacitated adults and will provide leadership to the community in responding to the problem.

The Adult Protective Services Social Worker will participate in professional development opportunities and will be proficient in best practice methods of the profession.

The Adult Protective Services Social Worker will participate in research and studies that expand the knowledge base needed to increase the effectiveness of Adult Protective Services.

APPENDIX V – Notification for Employers of Mandated Reporters (optional)



Virginia Department of Social Services
Adult Protective Services Program
7 North Eighth Street, 4th floor
Richmond, VA 23219
Telephone: 804-726-7533

ACKNOWLEDGEMENT OF MANDATED REPORTER STATUS

I, _____, understand that when I am employed
(Employee Name)
as a _____, I am a mandated reporter
(Type of Employment)

pursuant to the *Code of Virginia*, §§ 63.2-1603 through 1610. This means that I am required to report or cause a report to be made to Virginia Adult Protective Services (APS) either by calling the APS Hotline (1-888-83-ADULT) or the appropriate local department of social services whenever I have reasonable cause to suspect that an adult aged 60 or over or an incapacitated adult aged 18 and over and who is known to me in my professional or official capacity may be abused, neglected or exploited. I understand that I must follow the reporting protocol, if any, of my employer, but my employer may not prohibit me from reporting directly to APS.

I understand that if I suspect a death of an adult aged 60 or over or an incapacitated adult aged 18 and over occurred due to abuse or neglect, I must report the death to the medical examiner and the law-enforcement agency in the locality in which the death occurred.

I understand that I am immune from civil or criminal liability on account of any reports, information, testimony and records I release if the report is made in good faith and without malicious intent. My identity will be held confidential unless I authorize the disclosure or disclosure is ordered by the Court.

I understand that if I willfully fail to report suspected adult abuse, neglect or exploitation, immediately upon suspicion, I may be subject to a civil money penalty imposed by the Commissioner of the Virginia Department of Social Services. If I am a law-enforcement officer, I understand the money penalty does not apply to me but that I will be referred to the Court system for non-reporting of suspected adult abuse, neglect or exploitation. If I am licensed, certified, or regulated by a health regulatory board, I may also be subject to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

I understand that there is no charge when calling the Hotline number (1-888-83-ADULT) and that the Hotline operates 24-hours per day, 7 days per week, 365 days per year.

I affirm that I have read this statement and have knowledge and understanding of the reporting requirements, which apply to me pursuant to the *Code of Virginia*, §§ 63.2-1603 through 1610.

Signature of Applicant/Employee

Date

APPENDIX W- Imposition of Civil Penalty

22 VAC 40-740-70 CIVIL PENALTY FOR NONREPORTING

A. THE DEPARTMENT MAY IMPOSE CIVIL PENALTIES WHEN IT IS DETERMINED THAT A MANDATED REPORTER FAILED TO REPORT SUSPECTED ABUSE, NEGLECT OR EXPLOITATION PURSUANT TO § 63.2-1606 OF THE *CODE OF VIRGINIA*.

B. CIVIL PENALTIES FOR ALL MANDATED REPORTERS EXCEPT LAW ENFORCEMENT OFFICERS SHALL BE IMPOSED AS DESCRIBED IN 22 VAC 40-740-80.

22 VAC 40-740-80 IMPOSITION OF CIVIL PENALTY

A. LOCAL DEPARTMENT REVIEW AND RECOMMENDATION.

1. BASED ON A DECISION BY THE LOCAL DEPARTMENT DIRECTOR OR HIS DESIGNEE THAT A MANDATED REPORTER FAILED TO REPORT AS REQUIRED BY § 63.2-1606 OF THE *CODE OF VIRGINIA*, THE LOCAL DIRECTOR SHALL PREPARE A WRITTEN STATEMENT OF FACT CONCERNING THE MANDATED REPORTER'S FAILURE TO REPORT AND SUBMIT THE STATEMENT OF FACT TO THE COMMISSIONER.

2. THE LOCAL DIRECTOR OR HIS DESIGNEE SHALL NOTIFY THE MANDATED REPORTER IN WRITING WITHIN 15 CALENDAR DAYS FROM THE DATE OF THE DETERMINATION OF THE INTENT TO RECOMMEND THAT A CIVIL PENALTY BE IMPOSED. THE NOTIFICATION WILL INCLUDE A COPY OF THE LOCAL DIRECTOR'S STATEMENT OF FACT CONCERNING THE MANDATED REPORTER'S FAILURE TO REPORT. THE NOTIFICATION SHALL STATE THE MANDATED REPORTER'S RIGHT TO SUBMIT A WRITTEN STATEMENT TO THE COMMISSIONER CONCERNING THE MANDATED REPORTER'S FAILURE TO REPORT. THE DATE OF THE NOTIFICATION IS THE POSTAGE DATE.

3. THE MANDATED REPORTER'S STATEMENT CONCERNING HIS FAILURE TO REPORT MUST BE RECEIVED BY THE COMMISSIONER WITHIN 45 DAYS FROM THE DATE OF THE LOCAL DIRECTOR'S NOTIFICATION OF INTENT TO RECOMMEND THE IMPOSITION OF A CIVIL PENALTY. A MANDATED REPORTER'S STATEMENT RECEIVED AFTER THE 45 DAYS SHALL NOT BE CONSIDERED BY THE COMMISSIONER.

B. REVIEW BY THE COMMISSIONER OR HIS DESIGNEE

1. THE COMMISSIONER OR HIS DESIGNEE SHALL REVIEW THE LOCAL DIRECTOR'S WRITTEN STATEMENT OF FACT CONCERNING THE MANDATED REPORTER'S FAILURE TO REPORT AND THE MANDATED REPORTER'S WRITTEN STATEMENT IN DETERMINING WHETHER TO IMPOSE A CIVIL PENALTY.

2. IN THE CASE OF LAW-ENFORCEMENT OFFICERS WHO ARE ALLEGED TO HAVE NOT REPORTED AS REQUIRED, THE COMMISSIONER OR HIS DESIGNEE SHALL FORWARD THE RECOMMENDATION TO A COURT OF COMPETENT JURISDICTION.

3. THE COMMISSIONER OR HIS DESIGNEE SHALL IMPOSE A CIVIL PENALTY UPON A MANDATED REPORTER WHO IS DETERMINED TO HAVE NOT REPORTED AS REQUIRED PURSUANT TO § 63.2-1606 OF THE CODE OF VIRGINIA. PENALTIES SHALL BE IMPOSED AS FOLLOWS:

A. FOR FIRST OFFENSES OF NON-REPORTING, PURSUANT TO §63.2-1606 H OF THE *CODE OF VIRGINIA*, THE PENALTY SHALL BE NOT MORE THAN \$500.

B. FOR SECOND AND SUBSEQUENT OFFENSES, PURSUANT TO §63.2-1606 H OF THE *CODE OF VIRGINIA*, THE PENALTY SHALL BE NOT LESS THAN \$100 AND NOT MORE THAN \$1,000.

4. THE COMMISSIONER OR HIS DESIGNEE SHALL NOTIFY THE MANDATED REPORTER WHETHER A CIVIL PENALTY WILL BE IMPOSED AND, IF SO, THE AMOUNT OF THE PENALTY. THIS WRITTEN NOTICE SHALL DESCRIBE THE REASONS FOR THE IMPOSITION OF THE CIVIL PENALTY. THE DATE OF NOTIFICATION SHALL BE DEEMED TO BE THE DATE THE MANDATED REPORTER RECEIVED WRITTEN NOTICE OF THE ALLEGED VIOLATION. THIS NOTICE SHALL INCLUDE SPECIFICS OF THE VIOLATION CHARGED AND SHALL BE SENT BY OVERNIGHT EXPRESS MAIL OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

5. IF A CIVIL PENALTY IS IMPOSED, A COPY OF THE NOTICE TO THE MANDATED REPORTER SHALL BE SENT TO THE APPROPRIATE LICENSING, REGULATORY, OR ADMINISTRATIVE AGENCY AND TO THE LOCAL DIRECTOR WHO RECOMMENDED THE IMPOSITION OF THE PENALTY.

6. ANY MANDATED REPORTER HAS THE RIGHT TO APPEAL THE DECISION TO IMPOSE A CIVIL PENALTY IN ACCORDANCE WITH § 2.2-4026 OF THE *CODE OF VIRGINIA* AND PURSUANT TO RULES OF THE SUPREME COURT OF VIRGINIA.

APPENDIX W-1 – Request to Impose Civil Penalty

Virginia Department of Social Services Adult Protective Services <u>Request to Impose Civil Penalty</u>	
It has been determined that the following individual is a mandated reporter that failed to report an incident of adult abuse, neglect, or exploitation as required by § 63.2-1606 of the <i>Code of Virginia</i>. Per 22 VAC 40-740-80, it is requested that a civil penalty be imposed for this failure to report.	
Mandated Reporter: Name: <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> 1st Failure <input type="checkbox"/> 2nd Failure</div>	Date Notice Was Sent to the Reporter: Phone Number:
Business Address:	Incident: Location: Date:
Abused: Name: Address: Description of Incident:	
Impact of Failure to Report:	

Signature of Department's Director or Designee

Date

Local Department of Social Services:

Phone Number:

APPENDIX W-2 – Sample Letter to Mandated Reporter (Intent to impose Civil Penalty)

Dear:

Based on § 63.2-1606 of the *Code of Virginia*, you are a mandated reporter of suspected adult abuse, neglect, or exploitation. This is to notify you of the **(name of local department)** Department of Social Services' intent to request that a civil penalty be imposed on you for failure to meet your reporting requirements.

Attached is a copy of the "Request to Impose Civil Penalty" form that identifies the incident you failed to report. This request has been submitted to the Commissioner of the Virginia Department of Social Services, who will review the request and determine the action to be taken.

If imposed, the penalty for the first failure to report may be up to \$500. The fine for subsequent failures will be not less than \$100 or more than \$1000.

You may submit a written statement regarding your failure to report to the Commissioner. Your statement must be received within 45 days of the date of this letter. If your statement is received timely, the Commissioner will review your statement and the agency's request to determine if a civil penalty will be imposed. You will receive a written notice of the Commissioner's decision.

The Commissioner's address is:

7 North Eight Street
Richmond, Virginia, 23219

Sincerely,

(Director)
(Name of Local Department)
(Address)

APPENDIX X - Code of Virginia, Chapter 16, Article 2. Adult Protective Services

§ 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1604. Establishment of Adult Protective Services Unit; powers and duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which, in coordination with adult protective services programs in the local departments, shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments;
2. To assist in developing and implementing programs to respond to and prevent adult abuse, neglect or exploitation;
3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation to mandated reporters and the public;
4. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect or exploitation are substantiated. The Department shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;
5. To develop policies and procedures to guide the work of persons in the field of adult protective services;
6. To prepare and disseminate statistical information on adult protective services in Virginia;
7. To operate the adult protective services 24-hour toll-free hotline and provide training and technical assistance to the hotline staff;
8. To provide coordination among the adult protective services program and other state agencies; and
9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect or exploitation.

§ 63.2-1605. Protective services for adults by local departments.

- A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.
- B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect or exploitation.
- C. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.
- D. If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the Circuit Court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the Court may enter an order permitting such access or entry.
- E. In any case of suspected adult abuse, neglect or exploitation, local departments, with the informed consent of the adult or his legal representative, may take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1.
- F. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.
- G. Local departments shall not investigate allegations of abuse, neglect or exploitation of adults incarcerated in state correctional facilities.
- H. Local departments shall notify the local law-enforcement agency where the adult resides, or where the alleged abuse, neglect or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect or exploitation was discovered, when in receipt of a report describing any of the following:
 - 1. Sexual abuse as defined in § 18.2-67.10;

2. Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or
 3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.
- I. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

- A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:
1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;
 2. Any mental health services provider as defined in § 54.1-2400.1;
 3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;
 4. Any guardian or conservator of an adult;
 5. Any person employed by or contracted with a public or private agency or facility and working with adults, in an administrative, supportive or direct care capacity;
 6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and
 7. Any law-enforcement officer.
- B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional

services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

- C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.
- D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.
- E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.
- F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

- G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.
- H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A, 7 shall be determined by a Court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.
- I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.
- J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.
- K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation, and prevention of adult abuse, neglect, and exploitation.

§ 63.2-1608. Involuntary adult protective services.

- A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a Court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or by a guardian or conservator appointed pursuant to Article 1.1 (§ 37.1-134.6) of Chapter 4 of Title 37.1.
- B. In ordering involuntary adult protective services, the Court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the Court.

- C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the Court upon a showing that the person is financially able to pay. In such event, the Court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

§ 63.2-1609. Emergency order for adult protective services.

- A. Upon petition by the local department to the Circuit Court, the Court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a preponderance of the evidence, that:
1. The adult is incapacitated;
 2. An emergency exists;
 3. The adult lacks the capacity to consent to receive adult protective services; and
 4. The proposed order is substantially supported by the findings of the local department that has investigated the case, or if not so supported, there are compelling reasons for ordering services.
- B. In issuing an emergency order, the Court shall adhere to the following limitations:
1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the Court shall designate the approved services in its order. When ordering adult protective services, the Court shall consider the right of a person to rely on non-medical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.
 2. The Court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No adult may be committed to a mental health facility under this section.
 3. Adult protective services may be provided through an appropriate Court order only for a period of 15 days. The original order may be renewed once for a five-day period upon a showing to the Court that continuation of the original order is necessary to remove the emergency.
 4. In its order, the Court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the adult's welfare and authority to give consent for the adult for the approved adult protective services until the expiration of the order.
 5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

- C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the adult's incapacity, if determinable; the proposed adult protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.
- D. Written notice of the time, date and place for the hearing shall be given to the adult, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least 24 hours prior to the hearing for emergency intervention. The Court may waive the 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the adult or others will result from the 24-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.
- E. Upon receipt of a petition for an emergency order for adult protective services, the Court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the adult is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the Court shall locate and appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult is not indigent, the Court may order that the cost of the proceeding shall be borne by such adult. This hearing shall be held no earlier than 24 hours after the notice required in subsection D has been given, unless such notice has been waived by the Court.
- F. The adult, the temporary guardian, or any interested person may petition the Court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the adult for whom the emergency services were ordered has occurred.
- G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the Court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the Court record. Such report shall be confidential and open only to such persons as may be directed by the Court.
- H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the Court to appoint a guardian pursuant to Article 1.1 (§ 37.1-134.6) of Chapter 4 of Title 37.1.

§ 63.2-1610. Voluntary adult protective services.

- A. The local department shall provide or arrange for protective services if the adult requests or affirmatively consents to receive these services. If the adult withdraws or refuses consent, the services shall not be provided.
- B. No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. In the event that interference occurs on a continuing basis, the director may petition the Court of competent jurisdiction to enjoin such interference.
- C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult or his representative agrees to pay for them or a Court orders the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the adult's assets after a finding that the adult is financially able to make such payment.

APPENDIX Y - *Code of Virginia* - Criminal Abuse or Neglect of Incapacitated Adults

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

- A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a Class 6 felony.
- B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody, or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) fracture, (iii) severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

- D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care.